

11 FEBRUARY 1948

I N D E X

	<u>Page</u>
Summation by the Prosecution by Mr. Keenan	38949
<u>MORNING RECESS</u>	38988
Summation by the Prosecution (cont'd) by Mr. Comyns Carr	38989
<u>NOON RECESS</u>	39029
Summation by the Prosecution (cont'd) by Mr. Comyns Carr	39030
<u>AFTERNOON RECESS</u>	39082
Summation by the Prosecution (cont'd) by Judge Hsiang	39083
Summation by the Prosecution (cont'd) by Judge Kwei	39111

Wednesday, 11 February 1948

INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Court House of the Tribunal
War Ministry Building
Tokyo, Japan

The Tribunal met, pursuant to adjournment,
at 0930.

Appearances:

For the Tribunal, all Members sitting, with
the exception of: HONORABLE JUSTICE LORD PATRICK,
Member from the United Kingdom of Great Britain, not
sitting from 0930 to 1600.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

(English to Japanese and Japanese
to English interpretation was made by the
Language Section, IMTFF.)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: All of the accused are present
4 except SHIRATORI, who is represented by counsel. The
5 Sugamo prison surgeon certifies that he is ill and un-
6 able to attend the trial today. The certificate will be
7 recorded and filed.

8 Mr. Chief of Counsel.

9 - - -

10 SUMMATION BY THE PROSECUTION

11 - - -

12 MR. KEENAN: May it please the Tribunal:

13 1. To borrow a phrase from an ancient system
14 of law, we have reached "the closing of the gates." For
15 the better part of two years we have been engaged in the
16 preparation and presentation of the evidence in this
17 case. There remains now the summation and the judgment
18 of this Court. This is indeed a very long period for
19 any criminal trial, but there are many reasons and there
20 is ample justification therefor.

21 2. The matters under inquiry here are not at
22 all of the nature of those with which our domestic tri-
23 bunals have been concerned in criminal proceedings. For
24 here we are examining events of the greatest historical
25 importance vitally affecting the affairs of the world

1 occurring over a period of fourteen years. This has
2 required calling witnesses from all parts of the world
3 and the production of important state documents brought
4 from China, far off countries in Europe and the United
5 States in addition to those ultimately unearthed from
6 the archives of the Japanese Government. Even in Japan
7 this search for documents produced important and revealing
8 evidence only after long and persistent effort.

9 3. Despite the fact that many of the events
10 required proof in considerable detail, their importance
11 with reference to these accused made necessary a most
12 considerable expenditure of time and care that the
13 proof in reference thereto be authentic and reliable.
14 We have been confronted with the extraordinary difficulty
15 of dealing with different languages. For herein
16 we have had truly a meeting of the East with the West,
17 and in many instances it has been with very considerable
18 effort that exact equivalents have been available in
19 translation.

20 4. We do not claim to have surmounted all of
21 these obstacles with perfection, but we do contend that
22 the evidence before this court is thoroughly comprehensible
23 to every one of the accused. All of the foregoing
24 constitute obvious hindrances to the expeditious proceeding
25 required by the Charter. They have often made

1 necessary laborious and even tedious processes to meet
2 its provisions.

3 5. The third provision of the Charter, Article
4 9, sets forth specifications to insure fair trial for the
5 accused. These relate to the Indictment and require that
6 the same should consist of a plain, concise and adequate
7 statement of each offense charged. They further provided
8 that each accused should be furnished in adequate time
9 for defense a copy of the Indictment and even of the
10 Charter in a language understood by the accused; ample
11 provision is made for the complete understanding of these
12 proceedings not alone by their counsel, but by the accused
13 themselves. The accused were given the right to conduct
14 their own defenses and to examine any witnesses either by
15 themselves or through their counsel. Due provisions were
16 made for the production of witnesses and documents upon
17 their demand and where equitable the Tribunal was required
18 to give such aid in obtaining production of the evidence
19 as the circumstances required.
20

21 6. While the Charter attempted to avoid as far
22 as possible unnecessary technicalities, its provisions
23 insured every reasonable safeguard for the administration
24 of justice. This Tribunal has been very exacting in its
25 own requirements that every fair opportunity be given to
these accused not alone to present evidence and to call

1 witnesses on relevant matters, but it has been extremely
2 zealous in protecting the accused from any prejudice.
3 The Court has shown great patience in permitting the
4 vituperative and insolent comments about the Hull note,
5 a message sponsored by the President of the United
6 States and its Secretary of State, without whose leader-
7 ship not alone these proceedings might never have taken
8 place, but the history of freedom in the world might
9 well have been altered.

10 THE PRESIDENT: Mr. Chief of Counsel, the
11 Representative on this Court of one of the greatest and
12 proudest nations has personally written to me commending
13 me for protecting the Allied Powers against any insult
14 that might have been offered in this court.

15 Furthermore, an associate prosecutor sent to
16 me a leading article in a great American newspaper
17 stating that I had protected the memory of President
18 Roosevelt. The article referred to me as a Britain.
19 Britains, including Australians, will always revere and
20 protect the memory of President Roosevelt.

21 MR. KEENAN: Mr. President, I had not known
22 that any remarks contained in this part of the summation
23 would be the subject of any comment by this Court which
24 has had this document for well over a week. The remark
25 just completed in this summation states that the Court

1 has shown great patience. I would not be able to con-
2 ceive of that constituting any direct or implied criti-
3 cism of any tribunal.

4 And as for President Roosevelt and his memory,
5 Mr. President, there are many of us that think it will
6 reach to the farthest borders of history and will not
7 need protection in this court from myself or even the
8 President of this Tribunal. The last thought in my
9 mind, Mr. President, was that a representative of the
10 Commonwealth of Australia would have any thought in any
11 manner of slighting the memory of President Roosevelt,
12 and I beg of you to believe that that never was in my
13 mind.

14 May I proceed?

15 THE PRESIDENT: You may.

16 MR. KEENAN: All of this has been done at great
17 expense of effort and time. None of the accused can
18 justly complain that he has not been given every oppor-
19 tunity to fairly meet the charges. The very length of
20 time of the trial, almost a year of which was spent in
21 hearing evidence tendered by the defense ought to clearly
22 demonstrate the manner in which their rights have been
23 safeguarded.

24
25 7. These proceedings were authorized and
directed by Douglas MacArthur, General of the Army of the

1 United States, as Supreme Commander for the Allied Powers,
2 and every effort has been made by the prosecution to
3 comply in both letter and spirit with the mandate con-
4 tained in his words. Every effort has been made to con-
5 fine it to the presentation of law and facts that even-
6 handed justice may prevail.

7 8. The time and care devoted in this trial were
8 well expended when considered in the light of the import-
9 ant task all of us are engaged in. The importance of
10 our task has been well stated by the Supreme Commander
11 at the time of the formal signing of the Japanese sur-
12 render aboard the battleship Missouri on 2 September 1945
13 in the following words, which I quote:

14 "...A new era is upon us. Even the lesson of
15 Victory itself brings with it profound concern, both for
16 our future security and the survival of civilization.
17 The destructiveness of the War potential, through pro-
18 gressive advances in scientific discovery, has in fact
19 now reached a point which revises the traditional concept
20 of War.

21 "Men since the beginning of time have sought
22 peace. Various methods through the ages have been
23 attempted to devise an international process to prevent
24 or settle disputes between nations. From the very start
25 workable methods were found in so far as individual

1 citizens were concerned but the mechanics of an instru-
2 mentality of larger international scope have never been
3 successful... We have had our last chance." I repeat
4 those words: "We have had our last chance. If we do not
5 desire some greater and more equitable system Armageddon
6 will be at our door..."

7 9. On 26 July 1945, the President of the
8 United States, the President of the National Government
9 of the Republic of China, and the Prime Minister of
10 Great Britain (subsequently they were joined by the
11 U.S.S.R.) stating that they were speaking on behalf of
12 the hundreds of millions of their countrymen, issued a
13 declaration referred to historically as the "Potsdam
14 Declaration." ^a They said:

15 "The time has come for Japan to decide whether
16 she will continue to be controlled by those self-willed
17 militaristic advisers whose unintelligent calculations
18 have brought the Empire of Japan to the threshold of
19 annihilation, or whether she will follow the path of
20 reason...

21 "There must be eliminated for all time the
22 authority and influence of those who have deceived and
23 misled the people of Japan into embarking on world con-
24 quest, for we insist that a new order of peace, security
25 and justice will be impossible until irresponsible

militarism is driven from the world."

1 10. The record here shows that the war lords
2 still in control of Japan, including some of these
3 accused, contemptuously tossed aside this warning. It
4 literally required atomic bombs to jolt them from their
5 seats of authority. To terminate their criminal careers
6 even this terrific force was insufficient until rein-
7 forced by an unprecedented act on the part of their
8 Emperor. We must not ignore these facts. The facts of
9 this case show clearly the utter futility of attempting
10 to change the militaristic mind by the calm processes
11 of reason. The militaristic mind bent on aggression
12 which inevitably leads to world holocausts can best be
13 repressed by the united action of the international
14 community through the imposition of the sternest measures
15 known to the law to prevent and deter such action in the
16 same way as like criminal tendencies have been handled
17 in all domestic systems of law.
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1 11. The Chief Executives of these Allied
2 Powers left no doubt as to the measures which they
3 deemed necessary to eliminate the authority and
4 influence of those who caused Japan to embark upon
5 world conquest through aggressive warfare, for they
6 stated specifically:

7 "We do not intend that the Japanese shall be
8 enslaved as a race or destroyed as a nation, but stern
9 justice shall be meted out to all war criminals,
10 including those who have visited cruelties upon our
11 prisoners."

12 With these words, the signatories to the
13 Potsdam Declaration, which included the signatories
14 of the Cairo Declaration, made it clear that the
15 pronouncement, and I quote:

16 "The three great allies are fighting this
17 war to restrain and punish the aggression of Japan"
18 was not directed to the people of Japan whom the
19 record clearly shows had no voice in the matter, but
20 was pointed to their militaristic leaders who alone
21 were responsible.
22

23 12. Added to the foregoing declaration we
24 have the publication to the world of the agreement of
25 the powers for the prosecution of the European axis
war criminals which made abundantly clear the firm

1 determination of the allies to bring to account for
2 stern punishment those of the Japanese nation who
3 were responsible for the planning and initiating of
4 these aggressive wars.

5 13. The various objections on the part of
6 the accused to the jurisdiction of this Court over
7 these accused and the crimes of planning, initiating
8 and waging aggressive war have already been dealt
9 with, and they have all been overruled after full
10 argument. It is therefore unnecessary, we assume,
11 to refer to any parts of the evidence subsequent to
12 such ruling relating to this matter.

13 14. With all of the foregoing so clearly
14 established, had this trial not taken place the
15 declaration in the Potsdam proclamation would remain
16 a vain and useless gesture. It is fitting then that
17 we should give every consideration to the basic
18 purpose spelled out in the mandate from such an
19 important authority, for it is very clear that our
20 purpose herein is to carry out that mandate.

21 15. The most significant part of the Potsdam
22 Declaration is worthy of its repetition here lest
23 its importance and meaning be obscured; namely, these
24 words, and I quote "for we insist that a new order
25 of peace, security and justice will be impossible

1 until irresponsible militarism is driven from the
2 world." Thus these world powers, speaking for all
3 their people, did not merely intend that such
4 irresponsible militarism be driven from Japan alone,
5 but were determined that it be driven and I quote
6 "from the world." In performing our task here in this
7 courtroom in the light of this expression, we must
8 understand that these long proceedings were always
9 intended to be more than a mere trial of individuals;
10 they were expected to be exemplary for the entire
11 world. When we use the word "exemplary" we mean not
12 alone in relation to the consequent lesson to others,
13 but exemplary in the broader sense in establishing an
14 International Tribunal to enforce peace and order in
15 accordance with the principles which mankind for a
16 long time past has recognized as necessary to be
17 enforced to insure its survival.

18 16. Until this proceeding and its companion
19 proceeding at Nuremberg, the efforts of the inter-
20 national community to establish law and order have
21 been to a great extent wasted. It has passed judgment
22 but has never effectively enforced its judgment. For
23 this reason, the eleven nations represented here,
24 comprising the greater part of the population of the
25 earth, have joined in this proceeding not only to

1 determine the issues involved, but to enforce justice
2 commensurate with the actions of the accused.

3 17. The defense presented during the past
4 year proves fully that these accused are completely
5 unwilling to accept the responsibility for their
6 actions. We have seen the highest powers of the
7 nation --- cabinet officers, sub-cabinet officials
8 and the highest leaders of the army and navy -- who
9 formulated and directed the policy of Japan, and
10 hurled that nation into the abyss of warfare, when
11 brought before a court of justice, attempt to evade
12 any obligation or responsibility for the unlawful
13 acts they so willingly set in motion.

14 18. In so doing, they follow the pattern
15 employed by almost all classes of criminals when
16 cornered and brought before a Tribunal to answer
17 criminal charges. From all of the remaining twenty-
18 five accused, including former Prime Ministers,
19 Cabinet members, high ranking diplomats, propagandists,
20 generals, marshals, admirals, and the Lord Keeper of
21 the Privy Seal (the Emperor's adviser), we have heard
22 one common reply: No one among them wanted to bring
23 about this war. This applies to the Manchurian invasion,
24 the subsequent China wars, and the Pacific war, an
25 unbroken course of aggression covering a period of

fourteen years. These wars not alone halted the
1 progress of civilization, but actually set it in
2 retrogression to the dark ages. When they cannot
3 deny the authority, the power and responsibility of
4 the positions they held and cannot deny acquiescence
5 in the policy of continuing and expanding these
6 aggressive wars to the extent that the whole world
7 was shaken by them, they coolly assert that there was
8 no other course left open. They were compelled, they
9 allege, to do all this to prevent civil war in Japan
10 or to avoid national suicide. They sought a new order
11 in Greater East Asia and allege that they were anxious
12 to extend the benefits of Japan's civilization
13 throughout that vast area. But the facts herein
14 disclosed show that from 1931, a full decade before
15 Pearl Harbor and before they had launched this vast
16 program for the alleged promotion of peace and
17 tranquility and stability in Greater East Asia, their
18 own home government was so unstable that during these
19 few years, three Prime Ministers were assassinated;
20 attempts were made on the lives of two others; and
21 the capital of Japan remained in a state of seige for
22 a period of many days while another Prime Minister's
23 life was sought. He remained alive in hiding, when
24 his brother-in-law, mistaken for himself, was assassinated
25

1 in the Prime Minister's home. The Premier himself
2 escaped in disguise as a mourner in his own supposed
3 funeral procession. The last of the elder statesmen,
4 Prince SAIONJI, who had defacto selected the Prime
5 Ministers for this period, escaped with his life by
6 reason of being forewarned of attack and under the
7 protection of a very heavy guard. Indeed, it appears
8 in evidence offered by the defense that at the very
9 moment when the all important choice was made for
10 the selection of Prime Minister in October 1941 when
11 TOJO was chosen, the advisers to the Emperor were
12 in mortal fear of assassination. They knew full well
13 that in the event that TOJO, the leader of these
14 irresponsible militarists, was not chosen to be the
15 head of the Japanese government they faced a national
16 insurrection and even a coup d'etat. This is the
17 evidence offered by the defense.

18 19. It seems never to have occurred to any
19 of these accused that they had the first obligation
20 and duty to set their own house in order, to the
21 extent of providing ample security from assassination
22 of their own national leaders, before they proceeded
23 on with this vast scheme to confer the benefits of
24 Japanese civilization throughout such a great part of
25 the world. We have learned through the events how

1 completely the people of Japan had been dominated
2 and enslaved. From the humblest citizen to the
3 highest authority not a single person of the eighty
4 millions in Japan had liberty of expression or even
5 of thought. Truly this was a reign of terror. The
6 record in this case clearly proves that Japan needed
7 to defend itself not against forces from without, but
8 from the evil, malignant and ruthless elements in
9 the heart of its capital.

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20. Although these weird and tyrannical events are an integral part of the conspiracy which we have charged and proved in this proceeding, we have gone into the matter only to the extent necessary to go forward with the main burden of the charges in the Indictment. We have not, and do not feel it necessary to consider all the minute details of this internal history. Suffice it to say that history records not only a failure on the part of the Japanese leaders to punish, but even to ascertain the identity of the guilty parties in this long series of insurrections. The authorities, many of whom have appeared on the stand as witnesses in this Tribunal, claimed that they were unable to determine their identity. We suggest to this Tribunal that here is exhibited the apotheosis of irresponsible militarism. The keynote of this whole case is irresponsible militarism in action. No better example of irresponsible militarism can be found in all of the pages of history.

21. We therefore submit that if ever in history the occasion required, it is now high time that a court of justice in an orderly and judicial manner determine who are the responsible individuals for bringing these scourges upon mankind. The first step in the process is the establishment of the identity

1 of the responsible individuals. The second is the
2 imposition upon them of the punishment that the Potsdam
3 Declaration requires; that is, stern punishment, com-
4 mensurate with the nature of the crimes committed.
5 The determination of what this punishment should be
6 is not the duty of the prosecution. We feel it neces-
7 sary only to point out that the crimes described are
8 the vilest. Under no circumstances can they be con-
9 doned. The only possible defense that could be raised
10 to such conduct would be one of insanity. No such plea
11 has been entered by any of the defendants remaining
12 in the dock. One accused has already been removed in
13 this proceeding on the motion of the Tribunal itself
14 because of the doubts as to his sanity at the time of
15 trial. Can there be any doubt as to the quantum of
16 punishment for any sane individual found guilty of
17 coldly and deliberately electing to adopt a policy of
18 aggression and deliberately putting forces into motion
19 calculated to bring about an avalanche of destruction
20 of such proportion that he must have known that not
21 alone entire communities would be wiped out but that
22 the number of innocent victims could be counted in the
23 millions?
24

25 22. It is more than disturbing to hear the
view expressed that any such sane individual who

1 deliberately adopted such a program and helped
2 implement it could assert as a defense that he
3 believed it was the course that should be adopted
4 for the best interests of his nation. We emphatically
5 deny that any reasonable interpretation of the Nuern-
6 berg judgment and the sentences imposed by that
7 Tribunal can lead to the view that the crimes con-
8 nected with aggressive war are not deserving in them-
9 selves of the maximum punishment known to mankind.
10 Such a view is a complete distortion of the Nuernberg
11 judgment based upon statistics rather than the con-
12 sidered words of that Tribunal. In the course of its
13 judgment, the Nuernberg Tribunal stated:

14 "To initiate a war of aggression therefore
15 is not only an international crime; it is the supreme
16 international crime, differing only from other war
17 crimes in that it contains within itself the accumu-
18 lated evil of the whole."

19 Lest there be any misapprehension of their
20 view, that court later stated in the course of its
21 opinions:

22 "In the opinion of the Tribunal those who
23 wage aggressive war are doing that which is equally
24 illegal, and of much greater moment than a breach of
25 one of the rules of the Hague Convention."

1 23. In these proceedings, we are employing
2 time honored methods used by every civilized nation
3 of the world to maintain peace and tranquility among
4 its peoples. In every legal system, the question
5 has had to be determined who shall bear the burden of
6 the crime. Shall it be the victim or shall it be the
7 aggressor? In every legal system the aggressor has
8 received the maximum punishment known to the law for
9 the crimes analogous to those being judged here. We
10 have set forth in the opening statement and later in
11 the summation in more detail the proposition that
12 the premeditated illegal taking of human lives has
13 for many ages back been murder. The punishment for
14 that crime is universal and uniform in all legal
15 systems; that is, it is the sternest known to the
16 law. It has long been recognized that murder in the
17 international field is just as much murder as in the
18 local communities. This proposition cannot be stated
19 today any better than it was stated more than a
20 century and a half ago by a noted philosopher. Facing
21 this problem squarely, he said:

22 "'Tis the business of little minds to shrink;
23 but he whose heart is firm and whose conscience
24 approves his conduct will pursue his principles until
25 death. My own line of reasoning is to myself as straight

1 and clear as a ray of light. Not all the treasures
2 of the world, so far as I believe, could have induced
3 me to support an offensive war, for I think it murder;
4 but if a thief breaks into my house, burns and des-
5 troys my property and kills or threatens to kill me
6 or those that are in it and to 'bind me in all cases
7 whatsoever' to his absolute will, am I to suffer it?
8 What signifies it to me, whether he who does it is a
9 king or a common man; my countryman or not my country-
10 man; whether it be done by an individual villain or
11 an army of them? If we reason to the root of things
12 we shall find no difference; neither can any just
13 cause be assigned why we should punish in the one
14 case and pardon in the other."^a

15 24. Notwithstanding this clear recognition
16 of the real nature of aggressive war, it is only in
17 the international field that the punishment for such
18 crimes has not been imposed upon the guilty. On the
19 contrary, the peoples of the nations who have been
20 engaged in war both during the war and for a period
21 long subsequent thereto have undeservedly paid the
22 heavy price for the unlawful actions of their leaders.
23 It is the leaders who determine there shall be aggres-
24 sive war. For this point we need no better proof than
25 the admission in this courtroom of one of the Prime

1 Ministers of Japan that the people of China did not
2 bring about the war with Japan. He asserted that
3 the fault lay with their leaders. If the leaders
4 of a nation who brought about wars of aggression
5 escape their just punishment, the continuance of
6 such practice is incompatible with justice. It can
7 no longer be tolerated by the peoples of the earth
8 who are the ones who will benefit from these trials.

9 25. The people of the world have long wanted
10 peace and when the decision of peace or war is truly
11 left to them, they can be relied upon always to
12 choose peace. It is only when they are regimented
13 and oppressed and enslaved themselves and lose control
14 of their governments that these aggressive wars occur
15 and solemn covenants are torn to pieces at the will
16 of dictators. Whatever may have been true in the
17 past, it is indeed the people of the world today who
18 demand more and more that agreements and treaties,
19 especially those providing for peace and designed to
20 avert war be meticulously respected. The true con-
21 cept has never been better expressed than in the
22 words given at Christmas 1945 by Pope Pius XII when
23 he stated:

24 "The indispensable element in all peaceful
25 living among nations--the very soul of juridical

1 relations among them -- is mutual trust based on a
2 belief that each party will respect its plighted
3 word."

4 26. The first peace group was that of the
5 family and from then on the hope of mankind has been
6 to expand the peace group from family to community,
7 from community to nation, and from nation to nation.
8 The family group learned early that disputes that were
9 permitted to be settled by brute force and murder
10 would mean the end of the family, the end of the clan.
11 History taught all nations that such continued resort
12 to force among their own groups would mean the end
13 of the nation. Humanity well understands today that
14 a continued resort to force in the settlement of dis-
15 putes among nations can and definitely will lead to
16 the end of mankind.

17 27. In the opening statement of the prose-
18 cution we stated that we were attempting to present
19 an outline of our theory of the law under which we
20 are proceeding and the facts which we intend to
21 prove to show that each of the accused now before the
22 Tribunal is guilty of the crimes with which he is
23 charged in the Indictment. Now that our proof has
24 been adduced and the defense heard, we respectfully
25 invite this Tribunal to compare our claims both as to

1 law and fact as set forth in the opening statement
2 with this complete summation, for we believe that we
3 have offered clear and convincing proof of the exist-
4 ence of the criminal law which the Indictment charged
5 was violated and abundant and convincing proof that
6 it was so violated by these very accused substantially
7 in the manner set forth in the Indictment.

8 28. Later in this summation detailed con-
9 sideration will be given both as to the law and to
10 the facts. For the moment, we wish to observe that
11 in the proceedings of the League of Nations a war of
12 aggression was recognized as an international crime.
13 Twenty-one of the American republics in 1928 declared
14 that wars of aggression constitute an "international
15 crime against the human species." In 1928, sixty-
16 three nations comprising practically all of the
17 nations in the world condemned recourse to war as a
18 national policy for solution of international con-
19 troversies and renounced it as a national policy in
20 their relations to one another. They agreed never
21 to seek the settlement or solution of disputes "of
22 whatever nature or of whatever origin" except by
23 peaceful means.

24 29. We stated to this Court at the opening
25 of the proceedings that all of this was sufficient

1 proof that Japan prior to 1931 recognized a war of
2 aggression as an international crime. Since that
3 time another International Military Tribunal trying
4 the German co-conspirators of these accused has so
5 concluded. It would appear that the least informed
6 of these accused would be hard put to assert his
7 ignorance either of the commitments voluntarily
8 entered into by Japan as above set forth or their
9 consequence as a matter of law. The stations of life
10 which they occupied, in policy-making positions for
11 long periods of time, would seem to refute any vain
12 contention that these accused were ignorant of the
13 fact that they were breaking the law.

14 30. There are certain basic matters appear-
15 ing in this prosecution that we believe to be of
16 transcendent importance. First it is apparent from
17 the evidence that there did exist a really carefully
18 planned conspiracy or common plan for commission of
19 the crimes set forth in the Indictment. One of the
20 difficulties in relation to the analysis of this
21 conspiracy is that it was of such breadth of scope
22 that it is difficult to conceive of its being under-
23 taken by a group of human beings. It is of vital
24 importance in this proceedings to grasp the signifi-
25 cance of the fact that none of the events which took

1 place during this fourteen-year period occurred by
2 accident. Every event was coldly calculated, planned
3 for and put into execution. The evidence which will
4 shortly be considered in some detail will show to
5 what degree this calculation and planning took place.
6 It has been contended by the defense that there was
7 no overall conspiracy because the evidence shows that
8 the accused from time to time differed among them-
9 selves. However, it is significant to note that at
10 no time during the entire course of the conspiracy did
11 any of the accused differ from the others on the
12 fundamental object of the conspiracy itself. All
13 of the conflicts which the evidence has shown were
14 based solely on a difference among the accused as to
15 whether certain action being contemplated at a par-
16 ticular moment was properly timed. These differences
17 arose from the fact that certain defendants desired
18 at certain times to hasten the course of the con-
19 spiracy while others urged waiting a little longer
20 until the time fixed by the basic plan had arrived.
21 The prosecution has spent a great deal of time as has
22 the defense in dealing with the abortive negotiations
23 between Hitler's Germany and Japan during the years
24 1938 and 1939. It is significant to note that these
25 negotiations ended in failure only because the larger

1 group of the conspirators felt that the proper time
2 had not yet come to undertake the all-out commitments
3 being demanded by Germany. In the following year
4 when according to their plans the proper time had
5 come, there was no hesitation in entering into this
6 unholy alliance. Again there never was any intention
7 on the part of the conspirators to grant a single
8 concession during the conversations with the United
9 States. The conversations were prolonged until the
10 proper time had come under the plans for aggressive
11 action, at which time they were terminated. The
12 matter was taken away from the diplomats and placed
13 into the hands of the militarists for immediate
14 action. That the whole matter was one of deliberate
15 planning and cold calculation is well brought out by
16 the fact that in 1937 the War Ministry laid down its
17 basic plan for complete preparation for military
18 action by the end of the year 1941. It was at the
19 end of the year 1941 that the negotiations with the
20 United States were terminated and the real ultimatum
21 decided upon, not because of any attitude taken by
22 the authorities of the United States but because the
23 month and date had arrived for the fulfillment of the
24 design to open hostilities. In the light of this, we
25 can easily understand the reason behind the six long

1 months of almost continuous conversations between the
2 representative of the United States and those of
3 Japan on comparatively simple matters. We can better
4 understand the shallowness and even the falsity of
5 the Japanese militarists' defense that they had made
6 concession after concession and that the United States
7 had remained adamant. The truth is that from the
8 beginning to the end there never was a change in
9 the policy of Japan. What better proof of this do
10 we need than the official lament of Ambassador
11 NOMURA, a former admiral of the Japanese navy and a
12 former Foreign Minister of Japan, that the negotia-
13 tions were causing him to live a life of hypocrisy
14 among people who trusted and respected him. So great
15 was the hypocrisy that he asked for his immediate
16 recall. There never was a basic alteration or con-
17 cession made in a single term. Japan never intended
18 to modify the Tripartite Pact; it never intended to
19 remove its troops from China until its purpose had
20 been fully accomplished; it never intended at any
21 time that the United States or anyone else should
22 have equality of commercial opportunity in the Far
23 East. Any claim on the part of any accused to the
24 contrary is sheer brazenness. It is not alone
25 utterly unsupported by the detailed documentary

1 evidence in the case, but its falsity is demonstrated
2 when proof of the full conspiracy is brought to light.

3 31. To this what do these accused claim by
4 way of defense? We have already heard their con-
5 tention that even though the most seri . . of crimes
6 were committed by them, no court on earth -- no
7 court on earth has the right to determine their
8 guilt and impose punishment upon them. This defense
9 has already been considered by this Court after
10 argument and rejected, and in accordance with the
11 order of the Court that the motion was so denied and
12 with its intimation that further argument is neither
13 required nor desired, we shall not repeat or amplify
14 the reasons in support of our position. It is
15 sufficient to observe that this defense resembles
16 the usual, specious, highly technical claims set
17 forth in our municipal proceedings when our own
18 nationals attempt to escape the just consequences of
19 their own acts by seeking to raise similar artificial
20 barriers. No one of these accused would dare to
21 assert that he did not well know the inevitable
22 consequence of these crimes. For a full decade pre-
23 ceding the Manchurian invasion, all reasoning human
24 beings well knew that wars could mean nothing but the
25 wholesale destruction of human lives not alone on

1 the battlefield, on the seas, and in the air, but
2 in the furthest recesses of any nation. They
3 realized that any war after the first World War
4 could never be confined to combatants or to battle-
5 fields, but must inevitably reach non-combatants, ~~even~~,
6 women and children in every village, in every city
7 and in every part of the world. After the advent of
8 the air force it was patent that there was a new era
9 and that aggressive and unjustifiable wars had become
10 the accumulated evil of the whole. To reiterate, each
11 and every one of these accused well knew the conse-
12 quence of his act -- indescribable misery and suffer-
13 ing to mankind.

14 32. In a later part of this summation we
15 refer to the subject matter of aggressive war and any
16 justification claimed by way of self-defense. These
17 two matters are so closely related that they must be
18 considered together. In fact, we suggest that it
19 would be quite fair to assume that one is quite the
20 opposite of the other. It is true that nowhere do
21 we find a wholly adequate definition of what consti-
22 tutes aggressive warfare. It may well be that no
23 one will find it quite possible to formulate a com-
24 plete definition to fit all events. It may well be
25 that every judgment and reference thereto will have

1 in some measure to depend upon the facts adduced
2 before the organ determining such matters. We be-
3 lieve that there is an analogy between aggression
4 and self-defense among nationals of a nation, and
5 nations dealing with one another. And while it may
6 not be altogether possible to formulate a complete
7 definition, it is both possible and practical to
8 establish some broad standards by which conduct can
9 be judged in determining whether it is aggressive or
10 defensive in nature. We agree that the right of
11 self-defense is inherent for a nation in international
12 law to the same extent as it is for individuals in
13 domestic law.

14 33. In the case before us, however, we
15 believe that it has been clearly proved that the
16 Japanese invasion of China, beginning in Manchuria
17 in 1931 and extending to other parts of China since
18 1937 -- a large scale warfare for a period of four-
19 teen years with millions of Chinese people gripped
20 in sufferings from military occupation, political
21 domination, economic exploitation and widespread
22 atrocities -- constituted an aggression of a most
23 sinister nature. Such cannot under any concept of
24 justice be excused on the ground of self-defense. No
25 more can these accused successfully defend their

1 action in the hostilities commenced in the Pacific
2 against the western powers on 8 December 1941.

3 Likewise the evidence shows that the Japanese ruling
4 clique carried on an aggressive policy against the
5 U.S.S.R., committed acts of aggression and was pre-
6 paring a large-scale aggressive war against the
7 Soviet Union during a great number of years. While
8 there has been much talk by the accused of their
9 having acted in self defense, it is significant that
10 no one has claimed a threat from any power to attack
11 or invade the Empire of Japan. In these many long
12 months of trial there has not been a single scrap
13 of evidence tendered worthy of the name in support of
14 any such defense.

15 34. On the other hand, we confidently assert
16 that the action of the western powers in resisting
17 attack made upon them was clearly defensive. Surely
18 the treacherous attack upon Pearl Harbor, Kota Bahru,
19 the Philippines and other points justified an immed-
20 iate declaration of war by the United States and
21 other western powers, later joined by the U.S.S.R.,
22 and further justified the continuation until the
23 aggression of Japan was suppressed and that nation
24 conquered.
25

35. When we analyze the position of the

1 accused we find them urging justification for their
2 attacks upon the United States, Great Britain and the
3 Netherlands because these three nations refused to
4 continue to supply Japan with the materials of war
5 for their own destruction. They advert to such re-
6 fusals on the part of the western powers to furnish
7 Japan with the sinews of war in some vague manner
8 as constituting cruel and reprehensible conduct. It
9 is not entirely clear whether the claimed defense of
10 encirclement includes this or not.

11 36. The hypocrisy of the defense of the
12 accused by way of encirclement is later referred to
13 in this summation. Suffice it to say that this
14 defense finds offensive an attempt to reach a common
15 understanding among the democracies for their own
16 protection while at the same time it calls defensive
17 Japan's embarkation upon the vast project of conquer-
18 ing and subjecting to its control all of East Asia.

19 37. We submit, of course, that the validity
20 of all self-defense pleas must depend upon the facts.
21 We cannot subscribe to the theory that leaders of
22 nations any more than individuals can decide such
23 matters for themselves without taking the risk of
24 international judgment. To so hold would invite
25 world anarchy just as any such concept would mean

the end of all law and order in our domestic communities.

38. We reject the contention that it is self-defense for a nation to attack another because the latter refuses to supply materials of war to be used against it and its allies. It is only sheer insolence which permits these accused to claim self-defense when the records of their dark chicanery clearly disclose that a full year before war began they were building up their vast resources for military aggression from the imports from the very countries they were planning to attack. It is more than sheer insolence to claim self-defense when the records of their chicanery disclose that they carried this program one step further and demanded on the eve of war as a condition for temporary peace that the nations whose attacks were being contemplated should furnish even larger quantities of such materials for war, particularly petroleum. An analysis of exhibit 552, the record of the meeting of the Investigative Committee of the Privy Council, while considering the ratification of the Tripartite Pact, together with and in light of the notorious Plan B, throws into bold relief the hollowness of the plea of self-defense in this case. The position of the accused

1 is reminiscent of that of an individual -- a
2 highwayman -- who would assert the right of self-
3 defense because his intended victim refused to
4 surrender the means of his own defense to be used as
5 he means of bringing about his own destruction.

6 39. Similarly we may dispose in passing of
7 the claim made by a former Prime Minister that Plans
8 A and B did not constitute the final word of Japan.
9 This claim is in direct controversion to all of the
10 dependable evidence in this case offered both by the
11 prosecution and the defense. We shall, therefore,
12 request the Court to examine the evidence in the
13 summation which follows to ascertain the utter ab-
14 surdity as well as falsity of any such claim, es-
15 pecially when being advanced by way of substantiating
16 the justification of self-defense. Suffice it to say
17 that while the United States deeply resented Japan's
18 imperialistic designs and its career of force and
19 oppression, it at no time voiced any intention to
20 oppose Japan by way of military opposition. The re-
21 fusals of the United States to enter into a formal
22 agreement purporting to stabilize East Asia before
23 Japan in a forthright manner both disavowed and
24 desisted from its militaristic aggression was quite
25 another thing. With these facts so clearly estab-

1 lished -- so utterly uncontrovertible -- it is really
2 surprising that even such a malevolent character as
3 the Premier of Japan in October 1941 would have the
4 brazenness to contend that Japan really sought
5 peace.

6 40. We cannot leave this subject of self-
7 defense without making a brief reference to the Lytton
8 Commission and the subsequent proceedings on its
9 findings before the League of Nations. Whatever
10 basis the leaders of Japan, these accused, might other-
11 wise have had to assert that their actions were in
12 self-defense, the findings of this Commission and
13 their confirmation made that defense completely un-
14 available. When the League of Nations confirmed in
15 1934 the findings of the Lytton Commission that the
16 conduct of the leaders of Japan in the area of man-
17 churia from 1931 to the date of the findings was
18 aggressive in nature and not action taken in self-
19 defense, it was clear warning to any honest subse-
20 quent holder of high office in Japan that similar
21 conduct would be appraised in like manner and would
22 be certain to receive the same condemnation. It is
23 significant that the leaders of Japan set their
24 course in opposition to every member of the League
25 and to those non-members of the League who joined in

1 its judgment. This finding was no ex-parte judgment.
2 The League proceedings were quasi-judicial in nature.
3 Both Japan and China were permitted to state their
4 cause and state their contentions; both nations
5 availed themselves of this opportunity. The judg-
6 ment that ensued was not the action of a few isolated
7 nations but of a great international group who de-
8 cided the cause. Their verdict was unanimous. This
9 unanimity on the part of the many nations in the
10 League affords a comforting example of the ability
11 of nations to decide the right and wrong of a matter.

12 41. Japan's refusal to abide by the findings
13 and to accept the unanimous judgment of these many
14 nations was a confession of its guilt. In peremptor-
15 ily quitting the League, Japan gave notice of its
16 intention to be the judge of its own action and to
17 be a law unto itself. Clearly by their abrupt with-
18 drawal from the League, to whose jurisdiction they
19 had agreed, and by their refusal to abide by its
20 impartial judicial processes they demonstrated the
21 unwillingness of those Japanese leaders to accept the
22 fruits of reason. This utterly disposes of the last
23 vestige of any claim of self-defense and clearly
24 demonstrates their determination to become a law unto
25 themselves.

1 42. Can a nation which has voluntarily
2 chosen the role of an outlaw any more than any
3 individual in society who adopts a criminal career
4 and casts his lot with the lawless elements complain
5 because the responsible members of the community
6 impose sanctions for such conduct? Particularly can
7 that nation complain when the only penalty imposed
8 for such a long time for choosing the path of law-
9 lessness was an expression of disapproval from the
10 other members of the community? If Japan was isolated
11 at any time during the period covered in the Indict-
12 ment that isolation was deliberately chosen by the
13 leaders of that nation and was not imposed upon it
14 by any other member of the community of nations.

15 43. Much testimony has been given concern-
16 ing the treacherous attack at Pearl Harbor at the
17 very moment when the ambassadors of Japan were being
18 received by the Secretary of State of the United
19 States. While this in itself is only one of a long
20 series of events, it is symbolic of the whole program
21 of fraud, guile and duplicity. Moreover, this event
22 had a much larger significance. It was a deliberate,
23 calculated blow to the only means then existing or
24 now existing among nations to preserve peace. For
25 when the time has arrived that the highest officials

1 of a nation are unwilling to delay hostilities until
2 the conversations between their representatives have
3 terminated and due notice given no nation can continue
4 to trust another. Should such treachery remain un-
5 punished there would be an implied invitation to
6 world anarchy. Of what avail is the council table
7 when it is used not as a means to bring about an
8 amicable settlement of pending differences, but as
9 a screen of duplicity and treachery to cover up the
10 aggressive purposes of one of the parties.

11 44. The past history of Japan well illus-
12 trates its willingness to sacrifice principle as the
13 price of obtaining the initial advantage. Legal
14 technicians may dispute in the abstract as to the
15 quantum of notice required by the various treaties
16 before hostilities commence. However, it is clear
17 that no set rule can be laid down applicable to all
18 cases. Each case of what is proper notice depends
19 solely upon the facts of the particular case. This
20 is especially true where hostilities are begun at a
21 time when diplomats are ostensibly engaged in efforts
22 to bring the matter to an amicable conclusion and
23 where they are directly requested to extend the
24 negotiations to serve as a cover for a surprise
25 attack. This type of activity has never been con-

1 sidered by the legal technicians. It was truly un-
2 imaginable and outside the confines of human decency.
3 Surely conduct that does not square with common
4 decency can never be condoned by anyone.

5 45. These accused are guilty of ignominious
6 offense. Not a one of them had consideration for the
7 dignity of the human being. The revolting slaughter
8 of millions of their neighbors was largely brought
9 about by the domination and utter subjugation of
10 their own people. This they accomplished by the
11 free employment of any method that suited their
12 purpose -- superstition or brute force or a combina-
13 tion of both. They would make a divinity or a figure-
14 head of their ruler as the occasion required for their
15 evil purposes. They were devoted to no one, to no
16 principle, to nothing except their passion for
17 domination. With this history in Japan in dealing
18 with their own people, is it surprising that they
19 held truth and justice in such contempt in their
20 dealings with others? Is it therefore surprising
21 that they failed to properly appraise the real
22 strength of the qualities of the free peoples of the
23 democracies and failed to realize that such democ-
24 racies had the resiliency and power to meet and over-
25 come their aggression?

1 THE PRESIDENT: We will recess for fifteen
2 minutes.

3 (Whereupon, at 1050, a recess was
4 taken until 1108, after which the proceed-
5 ings were resumed as follows:)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Chief of Counsel.

4 MR. KEENAN: If the Court please, I have asked
5 my learned friend, the Associate Prosecutor from the
6 United Kingdom, Mr. Comyns Carr, to take up the read-
7 ing of the summation for the succeeding portion with
8 the permission of the Court.

9 THE PRESIDENT: Mr. Comyns Carr.

10 MR. COMYNS CARR: I. THE INDICTMENT

11 A-1. On January 19, 1946, General Douglas
12 MacArthur, Supreme Commander for the Allied Powers,
13 pursuant to the expressed intention of the Potsdam
14 Declaration of July 26, 1945,^{a.} and the Instrument
15 of Surrender of Japan of September 2, 1945,^{b.} created
16 the International Military Tribunal for the Far East
17 to try the following crimes:^{c.}

18 "Article 5. Jurisdiction over persons and
19 offenses.

20 "The Tribunal shall have the power to try and
21 punish Far Eastern war criminals who as individuals or
22 as members of organizations are charged with offenses
23 which include Crimes against Peace. The following acts,
24

25 (A-1. a. Ex. 2, T. 105
b. Ex. 6, T. 106
c. Ex. 8, T. 106; Ex. 9, T. 106)

1 or any of them, are crimes coming within the jurisdic-
2 tion of the Tribunal for which there shall be individual
3 responsibility:

4 "a. Crimes against Peace: Namely, the planning,
5 preparation, initiation or waging of a declared or
6 undeclared war of aggression, or a war in violation of
7 international law, treaties, agreements or assurances,
8 or participation in a common plan or conspiracy for the
9 accomplishment of any of the foregoing;

10 "b. Conventional War Crimes: Namely, viola-
11 tions of the laws or customs of war;

12 "c. Crimes against Humanity: Namely, murder,
13 extermination, enslavement, deportation, and other in-
14 humane acts committed before or during the war, or
15 persecutions on political or racial grounds in execu-
16 tion of or in connection with any crime within the
17 jurisdiction of the Tribunal, whether or not in violation
18 of the domestic law of the country where perpetrated.
19 Leaders, organizers, instigators and accomplices par-
20 ticipating in the formulation or execution of a common
21 plan or conspiracy to commit any of the foregoing crimes
22 are responsible for all acts performed by any person
23 in execution of such plan."
24

25 A-2. On April 29, 1946, the United States of
America, the Republic of China, the United Kingdom of

1 Great Britain and Northern Ireland, the Union of Soviet
2 Socialist Republics, the Commonwealth of Australia,
3 Canada, the Republic of France, the Kingdom of the
4 Netherlands, New Zealand, India, and the Commonwealth
5 of the Philippines, the prosecuting powers, acting
6 through the Chief of Counsel and the Associated Pros-
7 ecutors of the International Prosecution Section, the
8 duly designated investigative and prosecuting agency
9 for the crimes described in the Charter of the Tribunal,
10 filed their indictment against the twenty-eight ac-
11 cused in the present proceeding. Subsequent thereto,
12 the accused MATSUOKA, Yosuke^{a.} and NAGANO, Osami^{b.} died,
13 and the accused OKAWA, Shumei, was separated from the
14 proceeding because of then existing mental incompetency,^{c.}
15 leaving the present twenty-five defendants remaining
16 to be tried in the present proceeding. On May 3, 1946,
17 and ensuing days, the accused were arraigned, and each
18 of them, after the Indictment had been read, entered
19 a plea of "not guilty" to each and every charge and count
20 in the Indictment.^d Following the opening address on
21 behalf of the prosecution on June 4, 1946, the prosecution
22 began the presentation of its evidence on June 13, 1946,
23 completing its task on January 24, 1947. After argument
24

25 (A-2. a. Ex. 159, T. 1452.
b. Ex. 1959, T. 14,306.
c. T. 19,637-8.
d. T. 100-4,)

1 and dismissal of the motions to dismiss filed on behalf
2 of the accused,^{c.} the defense opened its presentation,
3 closing its evidence on January 12, 1948. Thereafter
4 the prosecution presented evidence in rebuttal.

5 A-3. The Indictment as filed consists of the
6 main text embodying fifty-five counts each chargeable
7 to all or some of the defendants and five appendices.
8 Appendix A is in the nature of a bill of particulars
9 summarizing the principal matters and events upon which
10 the counts of the Indictment are based. Appendix B
11 is a list of the treaty articles and Appendix C is a
12 list of the assurances which Japan and these accused are
13 charged to have violated. Appendix D contains the main
14 provisions of the laws and customs of war for the viola-
15 tion of which the accused stand charged. Appendix E
16 is a brief and partial statement of the facts with
17 respect to the individual responsibility of the accused
18 for the crimes set out in the Indictment.

19 A-4. The fifty-five counts of the Indictment
20 are divided into three broad groups. Group I, covering
21 counts 1 through 36, are charges of crimes against peace,
22 i.e., the planning, preparing, initiation and waging of
23 declared or undeclared war or wars of aggression and
24 war or wars in violation of international law, treaties,
25 (A-2. e. T. 16,997.)

1 agreements and assurances. (Since the expressions
2 "war and wars of aggression" and "war or wars in viola-
3 tion of international law, treaties, agreements and
4 assurances" for most purposes of this case have an
5 identity of meaning, unless otherwise indicated, the
6 terms "aggressive war", "aggressive warfare" and "wars
7 of aggression" will be used throughout this summation
8 to cover both concepts to avoid the repetition of this
9 long expression each time it is used.) Group II, cover-
10 ing counts 37 through 52, contain the murder charges.
11 Group III, covering counts 53 through 55, contain the
12 charges with respect to conventional war crimes and
13 crimes against humanity.

14 A-5. The counts under Group I, the crimes
15 against peace or aggressive warfare counts, fall into
16 two broad classifications: Counts 1 to 5, the conspiracy
17 counts and counts 6 to 36 the substantive offenses. In
18 count 1, all of the accused are charged as having con-
19 spired as leaders, organizers, instigators or accomplices,
20 between January 1, 1928, and September 2, 1945, to have
21 Japan either alone or with other countries wage wars of
22 aggression against any country or countries which might
23 oppose her purpose for the purpose of securing the mil-
24 itary, naval, political and economic domination of East
25 Asia and of the Pacific and Indian Oceans and their

1 adjoining countries and neighboring islands. Count 2
2 charges the same defendants with conspiring throughout
3 the same period to have Japan wage aggressive war against
4 China to secure complete domination of the Chinese
5 provinces of Liaoning, Kirin, Heilungkiang, and Jehol
6 (commonly known as Manchuria). Count 3 charges the
7 same defendants with conspiracy over the same period
8 to have Japan wage aggressive war against China to
9 secure complete domination of China. In count 4, the
10 same accused are charged with having conspired to have
11 Japan alone or with other countries wage aggressive
12 war against the United States, the British Commonwealth
13 of Nations, France, the Netherlands, China, Portugal,
14 Thailand, the Philippines, and the Soviet Union to
15 secure a complete domination of East Asia and the Pacific
16 and Indian Oceans and their adjoining countries and
17 neighboring islands. Count 5 charges all of the accused
18 with having conspired with Germany and Italy to have
19 Japan, Germany, and Italy mutually assist each other
20 in aggressive warfare against any country which might
21 oppose them for the purpose of having these three
22 nations acquire complete domination of the entire world,
23 each having special domination in its own sphere, Japan's
24 sphere to cover East Asia and the Pacific and Indian
25 Oceans.

1 A-6. The substantive counts of Group I are
2 themselves divided into three categories. Counts 6
3 to 17 charge all of the accused with having planned and
4 prepared aggressive war against the countries specifical-
5 ly named in the counts. Counts 18 to 36 charge all of
6 the accused with the crime of initiating aggressive war
7 against specified countries and counts 27 to 36 charge
8 them with waging aggressive warfare against certain
9 named countries.

10 A-7. Counts 37 to 52 inclusive, comprising
11 Group II of the counts of the Indictment, charge the
12 crimes of murder and conspiracy to murder as crimes
13 against peace, conventional war crimes and crimes
14 against humanity. Count 37 charges certain of the
15 accused with having conspired to unlawfully kill or
16 murder members of the armed forces and civilians of the
17 United States, the Philippines, the British Commonwealth
18 of Nations, the Netherlands, and Thailand by initiating
19 unlawful hostilities against those countries, the
20 hostilities having begun in breach of Hague Convention
21 No. III of October 18, 1907. Count 38 charges the same
22 defendants with conspiracy to kill and murder the same
23 persons of the same countries by initiating unlawful
24 hostilities against those countries in violation of the
25 agreement between the United States and Japan of

1 November 30, 1908, the treaty between Britain, France,
2 Japan, and the United States of December 13, 1921, the
3 Kellogg-Briand Pact of August 27, 1928, and the Treaty
4 of Amity between Japan and Thailand of June 12, 1940.

5 Counts 39 to 43 charge the same defendants with the com-
6 mission on December 7 and 8, 1941, of the crimes of

7 murder at Pearl Harbor (count 39), Kohta Bahru, Kalantan

8 (count 40), Hong Kong (count 41), on board H.M.S. Petrel

9 at Shanghai (count 42), and at Davao in the Philippines,

10 (count 43). Count 44 charges all of the accused with

11 conspiracy to unlawfully kill and murder on a wholesale

12 scale prisoners of war and civilians in the power of

13 Japan. Counts 45 to 47 charge certain of the accused

14 with the murder of disarmed soldiers and civilians at

15 Nanking (count 45), Canton (count 46), and Hankow

16 (count 47); and counts 48 to 50 charge certain named

17 accused with the murder of disarmed soldiers and civilians

18 at Changsha (count 48), Hengyang (count 49), and Kweilin

19 and Luchow (count 50). Count 51 charges certain of the

20 accused with the murder of certain members of the armed

21 forces of Mongolia and the Soviet Union in the Khalkin-

22 Gol River area in 1939; and count 52 accuses certain of

23 the accused with the murder of certain members of the

24 armed forces of the Soviet Union.
25

1 A-8. Counts 53 to 55 are concerned with
2 conventional war crimes and crimes against humanity.
3 In count 53 all of the accused except SHIRATOHI are
4 charged either entirely or partially with having con-
5 spired to order, authorize and permit the various
6 Japanese theatre commanders, the officials of the
7 War Ministry and local camp and labor unit officials
8 to frequently and habitually commit breaches of the
9 laws and customs of war against the armed forces,
10 prisoners of war, and civilian internees of the com-
11 plaining powers and to have the Government of Japan
12 abstain from taking adequate steps to secure observ-
13 ance and prevent breaches of the laws and customs of
14 war. Count 54 charges the same defendants with having
15 ordered, authorized, and permitted the commission of
16 the same offenses as stated in count 53. Count 55
17 charges the same defendants with having recklessly
18 disregarded their legal duty to take adequate steps
19 to secure the observance and prevent breaches of the
20 laws and customs of war, these defendants being respon-
21 sible for securing the observance of the laws and cus-
22 toms of war by virtue of their offices.

23 A-9. For the purposes of summation the counts
24 of the Indictment and the law and the evidence pertain-
25 ing to them will be divided into two broad

1 classifications -- crimes against peace and conven-
2 tional war crimes and crimes against humanity. Although
3 the murder charges cover both broad classifications,
4 having been charged as crimes against peace, conven-
5 tional war crimes and crimes against humanity, since
6 certain of them were established by the evidence given
7 in connection with crimes against peace, while others
8 were established by the evidence in connection with
9 conventional war crimes and crimes against humanity,
10 for purposes of convenience in disposing of them in
11 this summation and to avoid repetition, and for those
12 purposes only, counts 37 to 43, 51 and 52, which were
13 established by the evidence on crimes against peace,
14 will be considered together with the crimes against
15 peace, while counts 44 to 50 will be considered together
16 with the conventional war crimes and crimes against
17 humanity.

18 II. CRIMES AGAINST PEACE

19 A. THE LAW

20 1. AGGRESSIVE WARFARE

21 B-1. We propose to offer a comprehensive
22 summary of our submission on the law and the Charter,
23 including the consideration of such points as we gather
24 from indications given in the course of the case are
25 likely to be raised by the defense.

1 B-2. Motions to quash the Indictment, attack-
 2 ing the jurisdiction of the Tribunal with regard to
 3 Crimes against Peace and against Humanity, as well as
 4 on various minor points were heard on May 13 and 14,
 5 1946;^{a.} On May 17 they were dismissed for reasons to
 6 be given later.^{b.} As we gather that substantially the
 7 same points, or some of them, are to be repeated in the
 8 guise of construction of the Charter, we think it nec-
 9 essary to summarize our views on this matter, but would
 10 refer the Tribunal also to the arguments as originally
 11 delivered by us.^{c.} We would, however, ask the Tribunal
 12 not to permit any point to be raised again which would
 13 in effect stultify the decisions already given. Our sub-
 14 missions on the law of the Charter are to be found also
 15 in more detail in the opening statement,^{d.} and in the
 16 reply to the motions to dismiss the charges at the con-
 17 clusion of the prosecution case.^{e.}

18 B-3. By International Law every belligerent
 19 has the right at any time while a state of war exists,
 20 either before or after the cessation of hostilities to
 21 try any person who may fall into its hands for crimes
 22 against International Law. No special treaty is required
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24 (B-2. a. T. 120-303.
 25 b. T. 319.
 c. T. 137-180; 234-280; 293-301.
 d. T. 402-35.
 e. T. 16,717-24; 16,773-801.)

1 for this purpose. Both sides exercised this right
2 during hostilities, though in the case of Japan some
3 of the purported exercises were themselves illegal and
4 constituted war crimes. The right which each allied
5 belligerent can exercise separately can equally well
6 be exercised by several of them jointly; that is merely
7 a matter of convenience and the avoidance of a multi-
8 plicity of trials and is not new. A treaty or agreement
9 between victorious and defeated nations might limit
10 these rights or might fortify them. In our submission
11 not only has the defense failed to show that they have
12 been limited, but we have shown that they have been for-
13 tified. In this sense it is true to say that the Char-
14 ter derives its authority from the Instrument of Surren-
15 der, and the previous Allied declarations and Japanese
16 acceptance incorporated therewith, especially the Potsdam
17 Declaration. The latter contains in Clause 10 the
18 phrase "Stern justice shall be meted out to all war
19 criminals, including those who have visited cruelties
20 upon our prisoners." The Cairo Declaration, incor-
21 porated in the Potsdam Declaration by Clause 8, contains
22 the sentence, "the three Great Allies are fighting this
23 war to restrain and punish the aggression of Japan."
24 If this did not make it clear that the term "war crim-
25 inals" included those responsible for the war, the

1 publication on August 8, 1945, of the agreement and
2 Charter for the "Prosecution and Punishment of the
3 Major War Criminals of the European Axis" can have left
4 no doubt on the point, or as to the general nature of
5 the charges intended to be brought against them. If
6 this was not known to the Japanese Government, as we
7 submit it must have been, or if there was any such
8 doubt, it could have been cleared up by a question,
9 but that no such doubt existed in fact is now proved by
10 two extracts from KIDO's Diary, which show that on
11 August 9, 1945, the Japanese Government was thinking
12 of proposing a stipulation for "handling in our own
13 country of persons responsible for the war," an idea
14 which was abandoned when the qualified acceptance of
15 August 10 was written. On that day the Emperor said to
16 KIDO, ^{f.} "I could not bear the sight . . . of those
17 responsible for the war being punished . . . but I
18 think that now is the time to bear the unbearable."
19 In view of this it is hardly necessary to add anything
20 as to the construction of the words "war criminals,"
21 which was fully argued on the first motion, before this
22 evidence was given. The final acceptance is dated
23 August 14 and the Instrument of Surrender September 2.
24
25 B-4. Furthermore, the Instrument of Surrender
(B-3. f. T. 31,178.)

1 as required by the letter of the Secretary of State of
2 the United States on behalf of the Allied Powers of
3 August 11, 1945, and agreed to in the Final Acceptance,
4 clearly authorizes the Supreme Commander to issue orders
5 for giving effect to the terms, which must include the
6 power to define more precisely anything stated therein
7 in a general form. It would be necessary for the de-
8 fense to show, as a matter of construction, that the
9 phrase in the Potsdam Declaration could not include
10 "those responsible for the war," before they could have
11 any hope of attacking with success the basis of the
12 Charter of this Tribunal or the Counts in the Indictment
13 founded upon it, even if it were now open to them to do
14 so.

15 B-5. In our submission, therefore, the Char-
16 ter is conclusive as to the composition and jurisdic-
17 tion of the Tribunal and as to all matters of evidence
18 and procedure. As to the crimes listed in Article 5,
19 it is our submission that the Charter is and purports
20 to be merely declaratory of international law as it
21 existed from at least 1928 onwards and indeed before.
22 We respectfully urge the Tribunal to examine this
23 proposition and to base its judgment upon it. In doing
24 so, we ask the Tribunal to make an authoritative deci-
25 sion on this matter. First of all we cite the following

1 passage from the judgment of the Nuernberg Tribunal
2 which we adopt and ask this Tribunal to adopt.^{a.}

3 "It was urged on behalf of the defendants
4 that a fundamental principle of all law -- international
5 and domestic -- is that there can be no punishment of
6 crime without a pre-existing law. 'Nullum crimen sine
7 lege, nulla poena sine lege.' It was submitted that
8 ex post facto punishment is abhorrent to the law of all
9 civilized nations, that no sovereign power had made
10 aggressive war a crime at the time the alleged criminal
11 acts were committed, that no statute had defined ag-
12 gressive war, that no penalty had been fixed for its
13 commission, and no court had been created to try and
14 punish offenders.

15 "In the first place, it is to be observed that
16 the maxim nullum crimen sine lege is not a limitation
17 of sovereignty, but is in general a principle of jus-
18 tice. To assert that it is unjust to punish those
19 who in defiance of treaties and assurances have attacked
20 neighboring states without warning is obviously untrue,
21 for in such circumstances the attacker must know that
22 he is doing wrong, and so far from it being unjust to
23 punish him, it would be unjust if his wrong were al-
24 lowed to go unpunished. Occupying the positions they
25 did in the Government of Germany, the defendants, or
(B-5. a. Nuernberg Judgment, pp. 38-41.)

1 at least some of them must have known of the treaties
2 signed by Germany, outlawing recourse to war for the
3 settlement of international disputes; they must have
4 known that they were acting in defiance of all inter-
5 national law when in complete deliberation they carried
6 out their designs of invasion and aggression. On this
7 view of the case alone, it would appear that the
8 maxim has no application to the present facts.
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1 "This view is strongly reinforced by a
2 consideration of the state of international law in
3 1939, so far as aggressive war is concerned. The
4 General Treaty for the Renunciation of War of 27th
5 August, 1928, more generally known as the Pact of
6 Paris or the Kellogg-Briand Pact, was binding on
7 sixty-three nations, including Germany, Italy and
8 Japan at the outbreak of war in 1939. In the preamble,
9 the signatories declared that they were:

10 "'Deeply sensible of their solemn duty
11 to promote the welfare of mankind; persuaded that
12 the time has come when a frank renunciation of war
13 as an instrument of national policy should be made
14 to the end that the peaceful and friendly relations
15 now existing between their people should be perpet-
16 uated . . . all changes in their relations with
17 one another should be sought only by pacific
18 means . . . thus uniting civilized nations of the
19 world in a common renunciation of war as an instru-
20 ment of their national policy . . .'

21 "The first two Articles are as follows:

22 "'Article I: The High Contracting Parties
23 solemnly declare in the names of their respective
24 peoples that they condemn recourse to war for the
25 solution of international controversies and renounce

1 it as an instrument of national policy in their
2 relations to one another.'

3 "'Article II: The High Contracting Parties
4 agree that the settlement or solution of all disputes
5 or conflicts of whatever nature or of whatever
6 origin they may be, which may arise among them,
7 shall never be sought except by pacific means.'

8 "The question is, what was the legal effect
9 of this Pact? The nations who signed the Pact or
10 adhered to it unconditionally condemned recourse to
11 war for the future as an instrument of policy, and
12 expressly renounced it. After the signing of the
13 Pact, any nation resorting to war as an instrument
14 of national policy breaks the Pact. In the opinion
15 of the Tribunal, the solemn renunciation of war as
16 an instrument of national policy necessarily involves
17 the proposition that such a war is illegal in inter-
18 national law; and that those who plan and wage such
19 a war, with its inevitable and terrible consequences,
20 are committing a crime in so doing. War for the
21 solution of international controversies undertaken
22 as an instrument of national policy certainly includes
23 a war of aggression, and such a war is therefore
24 outlawed by the Pact. As Mr. Henry L. Stimson, then
25 Secretary of State of the United States, said in 1932:

1 "War between nations was renounced by the
2 signatories of the Kellogg-Briand Treaty. This means
3 that it has become throughout practically the entire
4 world . . . an illegal thing. Hereafter, when
5 nations engage in armed conflict, either one or
6 both of them must be termed violators of this general
7 treaty law . . . We denounce them as law breakers."

8 "But it is argued that the Pact does not
9 expressly enact that such wars are crimes, or set
10 up courts to try those who make such wars. To that
11 extent the same is true with regard to the laws of
12 war contained in the Hague Convention. The Hague
13 Convention of 1907 prohibited resort to certain
14 methods of waging war. These included the inhumane
15 treatment of prisoners, the employment of poisoned
16 weapons, the improper use of flags of truce, and
17 similar matters. Many of these prohibitions had been
18 enforced long before the date of the Convention; but
19 since 1907 they have certainly been crimes, punishable
20 as offenses against the laws of war; yet the Hague
21 Convention nowhere designates such practices as
22 criminal, nor is any sentence prescribed, nor any
23 mention made of a court to try and punish offenders.
24 For many years past, however, military tribunals
25 have tried and punished individuals guilty of

violating the rules of land warfare laid down by
1 this Convention. In the opinion of the Tribunal,
2 those who wage aggressive war are doing that which
3 is equally illegal, and of much greater moment than
4 a breach of one of the rules of the Hague Convention.
5 In interpreting the words of the Pact, it must be
6 remembered that international law is not the 'product
7 of an international legislature, and that such
8 international agreements as the Pact of Paris have to
9 deal with general principles of law, and not with
10 administrative matters of procedure. The law of war
11 is to be found not only in treaties, but in the customs
12 and practices of states which gradually obtained
13 universal recognition, and from the general principles
14 of justice applied by jurists and practiced by mili-
15 tary courts. This law is not static, but by continual
16 adaptation follows the needs of a changing world.
17 Indeed, in many cases treaties do no more than express
18 and define for more accurate reference the principles
19 of law already existing.'

21 "The view which the Tribunal takes of the
22 true interpretation of the Pact is supported by the
23 international history which preceded it. In the year
24 1923 the draft of a Treaty of Mutual Assistance was
25 sponsored by the League of Nations. In Article I

1 the Treaty declared 'that aggressive war is an
2 international crime,' and that the parties would
3 'undertake that no one of them will be guilty of its
4 commission.' The draft treaty was submitted to
5 twenty-nine States, about half of whom were in favor
6 of accepting the text. The principal objection
7 appeared to be in the difficulty of defining the
8 acts which would constitute 'aggression,' rather than
9 any doubt as to the criminality of aggressive war.
10 The preamble to the League of Nations 1934 Protocol
11 for the Pacific Settlement of International Disputes
12 ('Geneva Protocol'), after 'recognizing the solidarity
13 of the members of the international community,'
14 declared that 'a war of aggression constitutes a
15 violation of this solidarity and is an international
16 crime.' It went on to declare that the contracting
17 parties were 'desirous of facilitating the complete
18 application of the system provided in the Covenant
19 of the League of Nations for the pacific settlement
20 of disputes between the states and of ensuring the
21 repression of international crimes.' The Protocol
22 was recommended to the members of the League of Nations
23 by a unanimous resolution in the Assembly of the
24 forty-eight members of the League. These members
25 included Italy and Japan, but Germany was not then a

member of the League.

1 "Although the Protocol was never ratified,
2 it was signed by the leading statesmen of the world,
3 representing the vast majority of the civilized states
4 and peoples, and may be regarded as strong evidence of
5 the intention to brand aggressive war as an inter-
6 national crime.

7 "At the meeting of the Assembly of the League
8 of Nations on the 24th September, 1927, all the
9 delegations then present (including the German, the
10 Italian and the Japanese), unanimously adopted a
11 declaration concerning wars of aggression. The
12 preamble to the declaration stated:
13

14 "The Assembly:

15 "Recognizing the solidarity which unites
16 the community of nations;

17 "Being inspired by a firm desire for the
18 maintenance of general peace;

19 "Being convinced that a war of aggression
20 can never serve as a means of settling international
21 disputes, and is in consequence an international
22 crime. . .'

23 "The unanimous resolution of the 18th
24 February, 1928, of twenty-one American Republics of
25 the Sixty (Havana) Pan-American Conference, declared

1 that 'war of aggression constitutes an international
2 crime against the human species.'

3 "All these expressions of opinion, and others
4 that could be cited, so solemnly made, reinforce the
5 construction which the Tribunal placed upon the Pact
6 of Paris, that resort to a war of aggression is not
7 merely illegal, but is criminal. The prohibition
8 of aggressive war demanded by the conscience of the
9 world, finds its expression in the series of pacts
10 and treaties to which the Tribunal has just referred.

11 "It is also important to remember that
12 Article 227 of the Treaty of Versailles provided for
13 the constitution of a special Tribunal, composed of
14 representatives of five of the Allied and Associated
15 Powers which had been belligerents in the first
16 World War opposed to Germany, to try the former
17 German Emperor 'for a supreme offense against inter-
18 national morality and the sanctity of treaties.' The
19 purpose of this trial was expressed to be 'to vindicate
20 the solemn obligations of international undertakings,
21 and the validity of international morality.' In
22 Article 228 of the Treaty, the German Government
23 expressly recognized the right of the Allied Powers
24 'to bring before military tribunals persons accused
25 of having committed acts in violation of the laws and

1 customs of war.'

2 "It was submitted that international law
3 is concerned with the actions of sovereign States,
4 and provides no punishment for individuals; and
5 further, that where the act in question is an act of
6 state, those who carry it out are not personally
7 responsible, but are protected by the doctrine of
8 the sovereignty of the State. In the opinion of the
9 Tribunal, both these submissions must be rejected.
10 That international law imposes duties and liabilities
11 upon individuals as well as upon States has long been
12 recognized. In the recent case of *Ex Parte Quirin*
13 (1942, 317 US 1), before the Supreme Court of the
14 United States, persons were charged during the war
15 with landing in the United States for purposes of
16 spying and sabotage. The late Chief Justice Stone,
17 speaking for the Court, said:

18 "From the very beginning of its history
19 this Court has applied the law of war as including
20 that part of the law of nations which prescribes for
21 the conduct of war, the status, rights and duties of
22 enemy nations as well as enemy individuals.'

23 "He went on to give a list of cases tried
24 by the Courts, where individual offenders were
25 charged with offenses against the laws of nations,

and particularly the laws of war. Many other
1 authorities could be cited, but enough has been said
2 to show that individuals can be punished for viola-
3 tions of international law. Crimes against interna-
4 tional law are committed by men, not by abstract
5 entities, and only by punishing individuals who com-
6 mit such crimes can the provisions of international
7 law be enforced.'

8 B-6. At the same time we wish to make the
9 following remarks.

10 The sources of international law have been
11 repeatedly defined to include: a.

12 (1) International Conventions; (2) Inter-
13 national Custom; (3) The General principles of law
14 recognized by civilized nations; (4) Judicial decisions;
15 (5) Teachings of highly qualified publicists; and
16 (6) Justice, equity, and good faith. It is not
17 necessary to establish absolute universality in the
18 recognition of any of these sources of international
19 law, which are only evidence of a general consensus
20 of opinion, in the absence of any world legislative
21 body. But obviously the fact that the country against
22 which, or against whose nationals any alleged rule is

23 B-6, a. Mixed Claims Commission, U. S. and Germany,
24 1922; Statute of Permanent Court of Inter-
25 national Justice, 1936.

1 to be applied, has itself recognized the rule, lends
2 great additional weight to it for the immediate pur-
3 pose.

4 B-7. Let us apply these considerations to
5 the various charges in the Indictment, the validity
6 of which is apparently attacked. International law,
7 like common law, is not a static, but a continually
8 growing body of legal concepts. In modern times its
9 growth is largely the result of international
10 treaties adopted by a large number of states, ex-
11 pressing the consensus of world opinions. Ideas which
12 may have been novel in 1919, and the subject of
13 controversy, were certainly no longer novel in 1931,
14 1941, or 1945. The decision adopted in the Treaty
15 of Versailles with regard to the prosecution of the
16 Kaiser, but for fortuitous reasons not put into
17 execution, was notice to the world establishing the
18 principle of the criminal responsibility for his
19 of their acts of the man or men actually in a position
20 to initiate an aggressive war. Just because it was
21 then to some extent novel it is perhaps as well that
22 it was not then put into execution. But that rather
23 emphasizes than minimizes its importance as notice
24 to future offenders. It is true that the United
25 States did not ratify that Treaty, but it is common

1 knowledge that the reason for her refusal was objec-
2 tion to the Government of the League of Nations, not
3 to the clause about the trial of the Kaiser. It is
4 more important that Japan not only signed it, as did
5 the U. S. A., but ratified it. The views expressed
6 by Messrs. Lansing and Scott at an early stage were
7 rejected by the Tribunal^{a.} as evidence, but as it
8 was intimated that they might be adopted as a part
9 of the defense argument it is as well to point out
10 that they expressed their belief that "a nation
11 engaging in a war of aggression commits a crime."
12 Their sole objection was based on the lack of precedent
13 for trying anyone for such an offense. They also
14 objected to the trial of the head of a State, a view
15 which we do not accept, but this was academic, because
16 they themselves pointed out that it only applies to
17 one actually holding that position at the time of his
18 trial, not to one who has abdicated or been repudiated
19 by his people. Neither the Kaiser nor those on trial
20 were in office at the commencement of the trial. It
21 is to be noted that Mr. Lansing afterwards personally
22 signed the treaty. Equally immaterial is the dis-
23 tinction between the Kaiser and his Ministers. The
24 Kaiser was, in fact as well as form, an absolute
25 B-7. a. T. 17682.

monarch, and his prosecution may well have been considered sufficient to establish the principle. Are the defense contending that, in the circumstances which prevailed in Japan at the relevant times, we should have prosecuted the Emperor and him alone, and allowed the most responsible political and military leaders to go free, merely in order that the precedent of Versailles might be meticulously followed? In our submission the greater includes the less, and the arguments used at the time of the Versailles Treaty against the prosecution of the head of a state are not applicable to responsible statesmen and naval and military leaders.

B-8. It is also important to note the precise charge on which it was agreed to prosecute the Kaiser: "for a supreme offense against international morality and the sanctity of treaties." A point has been made of the use of the word "offense" instead of "crime." It may be that the word was used because the charge was at that time considered novel by some people, though it was merely an extension of the principle for many years recognized in the prosecution of offenders against the laws of war and breakers of other treaties which amplified them. However, the point is in any case immaterial, because the charge is not novel

now, if it was then. The importance of the phrase
1 is that it establishes the right to try and punish an
2 individual for a violation of the sanctity of treaties,
3 which is exactly what is contained in Article 5 (A)
4 of the Charter and Groups I and II of the Indictment.

5 B-9. There is no distinction in principle
6 between "conventional war criminals" and "those
7 responsible for the war." Each is simply a class of
8 people who offend against certain international laws
9 recognized at the time their offenses against those
10 laws were tried and punished, although so far as
11 they were contained in treaties, the latter contained
12 no express provisions for the purpose and no definition
13 of any such crimes or their punishment. The illegality
14 of aggressive war is a modern concept chiefly arising
15 from or contained in treaties adopted since 1914.
16 The fact that the latter also contain no express
17 references to criminal responsibility or punishment
18 puts them in no different category from the earlier
19 treaties, of which the same is true. The criminality
20 and punishment arise from the long established practice
21 of punishing offenders against such rules as were from
22 time to time recognized. The only difference is that
23 with the growth of international law and treaties,
24 a greater number of rules are now recognized, and
25

1 their scope has been enlarged. Since all the charges
2 of aggressive war in this Indictment are also alleged
3 as breaches of treaty it may not be strictly necessary
4 to decide whether in the absence of such a breach
5 aggressive war is now a crime, though in our submission
6 world opinion has by this time progressed to that
7 extent. It is irrelevant to consider whether actions
8 of certain nations in the past, when these treaties
9 were not in force, amounted to aggressive war, just
10 as the Tribunal has already ruled with regard to
11 breaches alleged to have occurred since the treaties
12 came into existence.
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B-10. We agree that when the Kellogg-Briand Pact was signed, it was stipulated that it did not interfere with the right of self-defense, and that each nation was to be the judge of that question. In his note of June 23, 1928, which contains the reservation as to self-defense on the faith of which all the nations accepted the treaty, the United States Secretary of State stated, quoting from his speech of April 28, 1928:

"(1) Self-defense. There is nothing in the American draft of an anti-war treaty which restricts or impairs in any way the right of self-defense. That right is inherent in every sovereign state and is implicit in every treaty. Every nation is free at all times and regardless of treaty provisions to defend its territory from attack or invasion and it alone is competent to decide whether circumstances require recourse to war in self-defense. If it has a good case, the world will applaud and not condemn its action. Express recognition by treaty of this inalienable right, however, gives rise to the same difficulty encountered in any effort to define aggression. It is the identical question approached from the other side. Inasmuch as no treaty provision can add to the natural right of self-defense, it is not in the interest of peace that (B-10. a. Treaty for the Renunciation of War, p. 57.).

1 a treaty should stipulate a juristic conception of
2 self-defense since it is far too easy for the unscrupulous
3 to mold events to accord with an agreed definition."
4

5 In his reply of July 28 the Japanese Foreign
6 Minister stated:
7

8 "In reply, I have the honour to inform you
9 that the Japanese Government are happy to be able to
10 give their full concurrence to the alterations now
11 proposed, their understanding of the original draft
12 submitted to them in April last being, as I indicated
13 in my Note to His Excellency Mr. MacVeagh dated the
14 26th of May, 1928, substantially the same as that entertained
15 by the Government of the United States. They
16 are therefore ready to give instructions for the
17 signature, on that footing, of the Treaty in the form
18 in which it is now proposed."

19 It is therefore abundantly clear that the
20 parties to the Treaty, while declining any precise
21 definition of "self-defense" because an unscrupulous
22 power could always "mold events to accord with an
23 agreed definition" did limit it to the case where a
24 nation was "defending its territory from attack or
25 invasion."

(B-10. b. Treaty for the Renunciation of War, pp. 85-6.)

1 B-11. It is a fallacy to say that because
2 it was found too difficult to define "aggression"
3 or "self-defense" in a way which would meet all pos-
4 sible cases and defy astute circumvention, therefore,
5 there was no recognition of the first as a crime or
6 that the second can be raised as a defense at the will
7 of the aggressor without regard to the facts. This
8 Tribunal is not called upon to provide a definition of
9 either term, but only to determine whether these facts
10 fall on one side of the line or the other.

11 B-12. It is also true that certain nations
12 made reservations with regard to including in the terri-
13 tories which might be defended those of other states
14 whose freedom and safety were considered essential to
15 their own security, but there is no suggestion that
16 anything except an actual (or definitely threatened)
17 "attack or invasion" of those territories would justify
18 war. This reservation may have been a wise precaution,
19 but it is really covered by another passage in the
20 note of June 23:
21

22 "(5) Relations with a treaty-breaking state.

23 "As I have already pointed out there can be
24 no question as a matter of law that violation of a
25 multilateral anti-war treaty through resort to war by
(B-12. a. Treaty for the Renunciation of War, p. 58.)

one party thereto would automatically release the other parties from their obligations to the treaty-breaking state. Any express recognition of this principle of law is wholly unnecessary." If one state violates the pact by attacking another, any other signatory is at liberty for any reason to come to the rescue of that other.

B-13. This plea of "self-defense" was raised by the German aggressors with regard to their invasion of Norway and Denmark. It was dealt with at Nuremberg in the following terms:

"Norway was occupied by Germany to afford her bases from which a more effective attack on England and France might be made, pursuant to plans prepared long in advance of the Allied plans which are now relied on to support the argument of self-defense.

"It was further argued that Germany alone could decide, in accordance with the reservations made by many of the Signatory Powers at the time of the conclusion of the Briand-Kollogg Pact, whether preventive action was a necessity, and that in making her decision her judgment was conclusive. But whether action taken under the claim of self-defense was in fact aggressive or defensive must ultimately be subject to (B-13. a. Nuremberg Judgment, p. 30.)

1 investigation and adjudicated if international law is
2 ever to be enforced.

3 "No suggestion is made by the defendants
4 that there was any plan by any belligerent, other than
5 Germany, to occupy Denmark. No excuse for that aggres-
6 sion has ever been offered."

7 * * * * *

8 "In the light of all the available evidence
9 it is impossible to accept the contention that the
10 invasions of Denmark and Norway were defensive, and
11 in the opinion of the Tribunal they were acts of
12 aggressive war."

13 B-14. Oppenheimer (6th Edition) deals with
14 the question as follows:
15 a.

16 "Prior to their final acceptance of the Pact,
17 the various signatories made declarations and statements
18 reserving for themselves the right to have recourse
19 to war in self-defense and to judge for themselves
20 whether a situation has arisen calling for such action.
21 It is not believed that these statements and declara-
22 tions have impaired the legal effect of the Pact to
23 any appreciable degree. The right to use force (which
24 in the relations of States may assume the form of war)
25 in self-defense constitutes a permanent limitation of
(B-14. a. Oppenheimer, Vol. II, pp. 153-5.)

1 the prohibition of recourse to force in any system of
2 law. Equally, it is of the essence of the conception
3 of self-defense that recourse to it must, in the first
4 instance, be left to the unfettered judgment of the
5 party which deems itself to be in danger. This being
6 so, undue importance need not be attached to these
7 various declarations in so far as they reserve for
8 the interested States the right to judge whether there
9 has arisen a case of resort to war in self-defense.
10 Such a faculty must be understood as referring to the
11 determination of the right to immediate action when
12 there is periculum in mora. But elementary principles
13 of interpretation preclude a construction which gives
14 to a State resorting to an alleged war in self-defense
15 the right of ultimate determination, with a legally
16 conclusive effect, of the legality of such action.
17 No such right is conferred by any other international
18 agreement. The Paris Pact, it is true, contains no
19 obligation to submit the disputed question of self-
20 defense to a judicial decision. But this is a feature
21 not confined to the Pact; it is common to all inter-
22 national treaties which are not governed by a general
23 arbitration treaty or by a special compromissary
24 clause.
25

"The legality of recourse to force in

1 self-defense is in each particular case a proper sub-
2 ject for impartial determination by judicial or other
3 bodies."

4 B-15. We submit that it must be for the
5 Tribunal to determine (a) whether the facts alleged
6 raise a case of self-defense within the proper meaning
7 of that term; (b) whether the accused honestly believed
8 in the existence of that state of affairs, or whether
9 it was, as so many Japanese claims were, on their own
10 showing, a mere pretext; and (c) whether there were
11 any reasonable grounds for such a belief. It is only
12 if all three of these conditions are satisfied, that
13 the right of each nation to judge for itself can
14 operate.

15 B-16. In our submission "self-defense" can
16 only apply in the case of a reasonably anticipated
17 armed attack, of which there is not the slightest
18 evidence that any of the accused either believed in
19 such a possibility or had any grounds for such belief.
20 The phrase cannot be extended to cover "encirclement"
21 either military or still less economic even if it
22 existed. Equally unfounded is the suggestion that
23 Secretary Hull's note of November 26, 1941,^a answering
24 (B-16. a. Ex. 1245-I, T. 10815.)
25

b.
the Japanese note of November 20 could afford any
1 ground for such a defense. The word "ultimatum,"
2 which has been applied to it, is ambiguous. At most
3 it could be said to contain the "last word" of the
4 powers on whose behalf it was delivered as to the terms
5 on which they would agree to Japanese demands, parti-
6 cularly as to the supply of oil and other materials
7 which could be used against them in war. Even that is
8 hard to spell out of it; it would perhaps be more cor-
9 rect to say that it amounted to a definite rejection
10 of the proposals of the Japanese note, which we now
11 know to have been their last word. But of "ultimatum"
12 in the sense of a demand with a threat of war it contains
13 not the slightest trace.
14

15 B-17. It seems impossible that the claim
16 for "self-defense" can be put higher than it was put
17 in the extraordinary group of legal essays prepared
18 by Japanese jurists in conjunction with the Foreign
19 Ministry in December 1941.^{a.} It is there admitted
20 (a) that the trend of modern authority is against the
21 maintenance of the obscure distinction between "self-
22 preservation" and "self-defense"; (b) that the same
23 tendency is to place "self-defense" in international
24

25 (B-16. b. Ex. 1245-H, T. 10811.
B-17. a. Ex. 1270-A, T. 11313.)

1 law in the same category as the right of "self-defense"
2 in domestic law; (c) that the claim to "self-defense"
3 cannot be put higher than as something which it is
4 "possible to argue" though it is suggested, for reasons
5 which are difficult to follow, that the case is some-
6 what better if the out-moded claim to "self-preservation"
7 can still be supported. The enumeration of alleged
8 facts or assumptions on which the claim can be argued,
9 in our submission, even if they were all true, which
10 they are not, shows the futility of the argument and
11 casts doubt on its bona fides.

12 B-18. In making the comparison with the
13 right of "self-defense" in domestic law we need hardly
14 go beyond the law of Japan. Articles 36 and 37 of
15 the Japanese Criminal Code deal with the question of
16 self-defense in relation to crimes under the Code.

17 Article 36:

18 "Unavoidable acts done in order to protect
19 the rights of oneself or another person against immi-
20 nent and unjust violations are not punishable."

21 Article 37:

22 "Unavoidable acts done in order to avert
23 present danger to life, person, liberty or property
24 of oneself or another person are not punishable,
25 provided the injury occasioned by such acts does not

1 exceed exceed in degree the injury endeavoured to be
2 averted."

3 It appears that the Japanese courts have
4 interpreted these articles strictly, especially with
5 regard to the word "unavoidable," and have also ruled
6 that the question is to be decided "by objective
7 observation and not by the subjective observation of
8 the author of such act.
9 a.

10 B-19. It is submitted that it is obvious
11 that the claim of the accused to rely upon "self-
12 defense" in relation to any of the present charges is
13 futile if the tests laid down in these articles are
14 applied. How can it be said that the injury occasioned
15 by the wars against China in the earlier years and
16 against the other Allies in 1941-1945, do not exceed
17 in degree the (alleged) injuries endeavoured to be
18 averted. Above all how can it be said that any of
19 these wars was "unavoidable"? For instance, in the
20 case of the Pacific War it is obvious that even a
21 breakdown of negotiations need not have resulted in
22 war. However, inconvenient to Japan the continuance of
23 the existing state of affairs may have been, it was in
24 no way necessary that it should result in war.

25 B-20. We claim therefore to have established
(B-18. a. Sebald. "The Criminal Code of Japan," pp.19-21.)

1 that to make war in breach of treaties is a crime against
2 international law, and that the provisions of Article 5(a)
3 of the Charter merely declare existing law. The pro-
4 visions of the relevant treaties in addition to those
5 above-mentioned, are discussed with the facts in the
6 sections to which they apply.

7 THE PRESIDENT: We will adjourn until half-
8 past one.

9 (Whereupon, at 1200, a recess was
10 taken.)

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AFTERNOON SESSION

1 The Tribunal met, pursuant to recess, at 1330.

2 MARSHAL OF THE COURT: The International
3 Military Tribunal for the Far East is now in session.

4 THE PRESIDENT: Mr. Comyns Carr.

5 MR. COMYNS CARR (Continued):

6 2. MURDER

7 B-21. Again, we submit that the crime of
8 murder being recognized as a crime by the law of every
9 civilized nation, and being defined in substantially
10 the same way, is part of International Law, (see the
11 third of the Sources of International Law above-
12 mentioned); and where the crime is of an international
13 character it can properly (apart from the Charter) be
14 treated as an International crime and tried by any
15 court having jurisdiction under international law. The
16 definition is "the intentional killing, (including,
17 of course, ordering of killing), of a human being
18 without legal justification."
19

20 B-22. Certain types of justification are
21 universally recognized in the municipal laws of all
22 countries. One is self-defense with which we have
23 already dealt. Another is the execution of the order
24 of a lawful Court. Another is belligerency, but the
25

1 belligerency, like any other alleged justification,
2 must be lawful. This does not mean merely that it
3 must not be a crime in itself. It means that it
4 must not be unlawful, whether amounting to a crime
5 or not. Whether making war in breach of a treaty in
6 itself constitutes a crime for which responsible
7 individuals can be tried and punished is a question
8 with which we have already dealt, but which does
9 not arise when the matter is looked at from this
10 simple point of view. This question was not directly
11 raised by the Nuremberg Indictment, and is therefore
12 not dealt with in the Judgment. We ask this Tribunal
13 to make an authoritative pronouncement upon it.

14 B-23. We contend that all the wars charged
15 in this Indictment were illegal because (a) they were
16 commenced without the warning required by the Hague
17 Convention III of 1907, and the killing both of soldiers
18 and civilians which took place at their commencement
19 was treacherous within the meaning of Article 23 of
20 Convention IV, and (b) because they were contrary to
21 the Pact of Paris and other treaties applicable in
22 each case. We should mention the remarkable contention
23 that because the United States Government in fact
24 intercepted many of the messages passing between the
25 Japanese government and their representatives and

thus gained some (though by no means complete)
1 knowledge of Japan's intentions, therefore, the attacks
2 designed as a surprise were not treacherous, and even
3 that the want of a declaration of war is in some way
4 cured. In our submission this contention is absurd.
5 The quality of treachery rests in the minds of those
6 making the attack, and cannot be cured by the fact
7 that it is found out. Still less can the non-fulfillment
8 of an express treaty requirement be excused, or its
9 iniquity even be mitigated by the fact that it is not
10 quite so successful as those responsible for it had
11 hoped.
12

13 B-24. It is no answer to say that even a
14 war so illegally commenced is one to which the laws
15 of war and the remaining provisions of Convention IV
16 and other treaties apply. No doubt they do, but that
17 does not destroy or condone the offence; it would
18 have been unlawful for the Allies to have ignored the
19 laws of war in fighting the Japanese although their
20 leaders were murderers, but it would have been lawful
21 and indeed a proper implementation of those laws
22 (though, perhaps unwise), to have tried and punished
23 any of those leaders who might have been captured
24 during hostilities, and it is lawful now.
25

B-25. We submit also that there is no

1 distinction between what happens in the course of a
2 war already in progress and what happens at its
3 commencement. It is all in the course of the war,
4 or technically of "hostilities" in the case of an
5 undeclared war. The killing of the first victims of
6 the war is obviously part of the hostilities, and
7 although the order to start those hostilities is given
8 previously it operates when they actually do start.
9 The soldier who does the killing may be innocent of
10 murder, not, of course, because he is acting under
11 orders, but because he has not means of knowing the
12 illegality. But the men who make the decision and
13 issue the original order to kill by their (possibly
14 innocent) agents, and knowing as they must, the
15 illegality, are thus guilty of murder.

16 B-26. It may well be that so far as the charge
17 of murder depends upon the absence of a declaration
18 of war it is cured by a subsequent declaration by
19 either party as far as later killings are concerned.
20 But so far as it depends upon the war being a breach
21 of other treaties it cannot be so cured.

22 B-27. We have charged these murder counts as
23 falling within each of the three clauses of Article
24 5 of the Charter. Murder is expressly named in clause
25 (c). It is also clearly contrary to numerous provisions

1 of Hague Convention III and IV, and therefore falls
2 also under clause (b). The special purpose of
3 showing that it also falls under clause (a) is to
4 bring within the jurisdiction of the Tribunal counts
5 37 and 38 alleging conspiracies to murder, if the
6 Tribunal accopts, as we do, the Nuremberg decision
7 that the only conspiracies within its jurisdiction as
8 separate charges are those mentioned in that clause.
9 It is true that murder is not specifically named there,
10 but we submit that if the Tribunal accepts our contention
11 that the necessary consequence of a war being initiated
12 or waged contrary to international law and treaties
13 is that the killing in it is murder, then these counts
14 fall within that paragraph as well. It is our contention
15 that war is simply killing and that illegal war is
16 simply illegal killing, and being obviously intentional
17 is therefore murder. Charges of murder depending upon
18 the breach of other provisions of the Hague and Geneva
19 Conventions are considered under that head.

20 B. THE CONSPIRACY

21 C-1. In the presentation of its evidence of
22 the crimes against peace the prosecution has followed
23 the conspiracy method of presentation. The same
24 procedure will now be followed in this summation. In
25 view of the nature of count 1 which charges all the

accused with having conspired from 1 January 1928
1 to 2 September 1945 to have Japan, either alone or in
2 combination with other countries, wage declared or
3 undeclared war or wars of aggression and war or wars
4 in violation of international law, treaties, agreements,
5 and assurances, for the purpose of securing the military,
6 naval, political, and economic domination of East
7 Asia and of the Pacific and Indian Oceans, it is
8 inevitable that this procedure be followed if we are
9 to avoid needless repetition and reiteration of the
10 same evidence. Since the other conspiracies charged
11 as crimes against peace are all integral parts of the
12 over-all conspiracy charged in count 1, and since the
13 substantive offenses charged as crimes against peace
14 are all acts done pursuant to or in accordance with
15 the over-all conspiracy of count 1, it will be a
16 relatively simple and brief matter, after the evidence
17 in support of count 1 has been set forth, to point
18 out which portions of that evidence supports the other
19 charges of the commission of crimes against peace.
20

21 C-2. In order that the evidence of the
22 gigantic conspiracy, in which those accused were
23 participants as leaders, organizers, instigators,
24 and accomplices, may be seen in its proper perspective
25 it will be quite useful before considering the evidence,

1 to examine the law of conspiracy and its relation to
2 this proceeding.

3 I. THE LAW OF CONSPIRACY AND CONNATE DOCTRINES

4 C-3. In this section we intend to show how
5 far the provisions of the Charter with regard to
6 conspiracy, planning, preparation, accessories and the
7 common responsibility of those engaged in a common
8 plan represent the general principles of law recognized
9 by all civilized nations. In our submission these
10 are in any case merely forms of charge and of proof
11 of responsibility, which might well be prescribed in
12 the constitution of any special tribunal such as this,
13 even if we had not already established the proposition
14 that the substantive offences charged are part of
15 International Law already existing.

16 These are in any case within the power of the
17 Supreme Commander to lay down. But we desire further
18 to establish that the above-mentioned provisions are
19 themselves part of International Law within the third
20 of the sources quoted above. We shall also discuss
21 certain points in the Nuremberg Charter and Judgment
22 relating to conspiracy, and in our Charter.

23 C-4. It is contended by the defense that
24 conspiracy is not an international crime because they
25 allege it is a doctrine peculiar to the Anglo-American

1 law. In this respect it should be noted that the
2 Nuremberg Charter, which also declares "conspiracy"
3 to be a crime, was created by agreement between four
4 nations, two of which do not follow the Anglo-American
5 system of law. Subsequently, nineteen additional
6 nations declared their adherence to the agreement and
7 only three of these were in the Anglo-American legal
8 system.^a It would indeed be strange that of the
9 twenty-three nations involved, eighteen which were not
10 of the Anglo-American legal system should sign a
11 document defining "conspiracy" as a crime if that
12 doctrine was foreign to their own legal concepts.
13 "Conspiracy" whether called by that specific title
14 or not is a concept common to most, if not all legal
15 systems.

16 For purposes of comparison with the laws of
17 other countries it is necessary to analyze the Anglo-
18 American doctrine rather fully into the following
19 rules:

- 20 1. That the crime of conspiracy is complete
21 with the agreement by two or more to commit a crime
22 against the security of the State, whether in fact it
23 is committed or any active steps are taken for the
24 purpose or not. (In some American States an "overt act"

25 (C-4. a. Nuremberg Judgment, page 1.)

is by statute required, but may be of a slight nature.)

1 2. That the offence extends subject to the
2 same conditions to an agreement to commit any felony.

3 3. Also to any misdemeanor.

4 4. Also to any unlawful act or any lawful
5 end agreed to be attained by unlawful means, although
6 not a crime if actually committed by one person alone.

7 5. That planning and preparation by one
8 person to commit a crime is not by itself a crime,
9 unless it amounts at least to an attempt.

10 6. That a joint offender, a principal in
11 the second degree, or an accessory before the fact,
12 i.e., "a leader, organizer, instigator or accomplice",
13 may be tried and convicted as a principal, and in the
14 absence of the person or other person who actually
15 committed the offence.

16 7. That in all cases where there is in fact
17 a common plan or conspiracy whether that is the crime
18 actually charged, or one or more of the parties are
19 charged with the substantive offense, any person who
20 joins in it at any time is from that moment until
21 the moment, if any, when it comes to an end or he
22 definitely dissociates himself from it, responsible
23 for all acts and words of his fellow conspirators,
24 whether known to him or not, provided that they are
25

1 within the scope of the plan or conspiracy to which
2 he has become a party, either originally or by
3 subsequent extension with his consent.

4 C-5. It will be our submission that rules
5 1 and 7 are part of the law of every country concerned,
6 including Japan, and that a conspiracy to disturb
7 the peace of the world or of a number of countries
8 by waging wars of aggression and in breach of treaties
9 is so closely analogous in the international sphere
10 to the conspiracy against the security of the state
11 in the municipal sphere, that the former crime may
12 properly be described as part of International Law
13 apart from the Charter.

14 C-6. The practice of other countries with
15 regard to rule 2 varies. Some countries include
16 conspiracies to commit some other major crimes, others
17 do not. Rules 3 and 4 are unknown to other countries.
18 But this is academic because we are not making such
19 charges here. Many countries do include planning or
20 preparation as crimes apart from conspiracy, contrary
21 to rule 5. This point we submit is also academic,
22 because in none of the counts is any individual charged
23 alone, and in effect, therefore, these charges amount
24 to conspiracy. As to rule 6, while all countries
25 recognize the persons there mentioned as criminals,

1 practice varies as to whether they can be charged as
 2 principals, or must be separately charged, though
 3 tried together, with the precise form of complicity
 4 alleged. But this we submit is in any case only a
 5 matter of procedure.

6 C-7. The French Penal Code recognizes two
 7 types of conspiracy (Complot). Article 89 makes a
 8 conspiracy to commit any of the crimes mentioned in
 9 Articles 87-91 a crime in itself. The crimes are to
 10 attempt by violence to destroy or change the Government
 11 or to incite people to take arms against it (Article 87);
 12 or to incite to civil war or to bring devastation,
 13 massacre or pillage into any commune (Article 91).
 14 Moreover one who proposes such a conspiracy is by
 15 Article 89 punishable even if his proposal is not
 16 accepted. The conspiracy may be open or secret.
 17 Article 265 is more general. It makes criminal any
 18 combination of a number of members, regardless of its
 19 duration, and any alliance formed for the purpose of
 20 preparing or committing felonies against persons and
 21 property. Article 267 makes it an offence for any
 22 person knowingly and voluntarily to give aid to such
 23 a combination. In all other cases French law deals
 24 with those who have actively assisted in the commission
 25 of a crime under Articles 59-61 of the Penal Code,

22 or individual crime

23 (2) In the case of all crimes Article 12
 24 divides "co-participants" in a crime into "organizers
 25 perpetrators, instigators and accomplices". Articles

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21 property. Article 267 makes it an offence for any
22 person knowingly and voluntarily to give aid to such
23 a combination. In all other cases French law deals
24 with those who have actively assisted in the commission
25 of a crime under Articles 59-61 of the Penal Code,

1 dealing with complicity. Though there are important
2 differences for some purposes between the theories of
3 complicity and conspiracy, either view of the law would
4 cover the facts of this case.

5 C-8. In the pre-Nazi German Code Article
6 49B, 83 and 128 and 129 create offences of conspiracy
7 without the need to prove any overt act in the case
8 of combinations with the following objects: major
9 crimes against life, high treason, secret societies
10 for any public purpose, hindrance by unlawful means
11 of administrative measures issued by the Government
12 or of the execution of the law.

13 C-9. In the law of U.S.S.R., conspiracy is
14 treated in two ways:

15 (1) By Articles 58 (11) and 59 (3) of the
16 Penal Code it is a separate crime to create or take
17 part in any organization for certain purposes (a)
18 the preparation or commission of any of the crimes
19 listed in other parts of Article 58, i.e., crimes
20 against the security of the State; (b) to form armed
21 bands for attacks upon state and private enterprises
22 or individual citizens.

23 (2) In the case of all offences Article 12
24 divides "co-participants" in a crime into "organizers
25 perpetrators, instigators and accomplices". Articles

17, 18 and 19 deal with definitions and degrees of punishment: Article 19 provides that preparation for a crime as well as its actual commission or any attempt are equally punishable. The degree of punishment is to vary with the actual extent of participation, organizers being considered the most guilty and punishment being enhanced if the crime is committed by a group or band (Article 47B). Members of such a group, and especially organizers are held responsible for the criminal acts of all other members, whether known to them or not, if within the scope of the original conspiracy.

C-10. The Netherlands Penal Code recognizes by Articles 96 and 103 the crime of conspiracy to commit a number of offences against the security of the State listed in Articles 92-5 inclusive and 102. The Military code contains similar provisions with severer penalties, including death.

C-11. Spain, and all the countries which were formerly Spanish colonies, including the Philippines, base their penal code on the original Code Napoleon of 1810, which is, of course, also the source of the French Penal Code. The effect is for our purposes the same as in the amended code above cited, with the addition of conspiracies against the

1 Emperor and members of his family to those against
2 the Government. By Articles 86 to 91 a conspiracy
3 (Complot) without an overt act, and an "attentat"
4 which is defined in effect as a conspiracy with an
5 overt act, for any of the objects above-mentioned,
6 is punishable with death. A mere proposal to form such
7 a conspiracy received lesser punishment. By Article
8 102 propaganda of various kinds is mentioned as one
9 of the matters which will prove the crime. Articles
10 103-6 make it a crime to conceal knowledge of such
11 conspiracies, even if the person concerned did not
12 approve of them: Articles 123-6 deal with combinations
13 among public officials to interfere with the execution
14 of the law, with varying penalties including death.
15 Articles 265-8 provide for the punishment of members
16 of an association for the purpose of mere organization
17 of the band, or correspondence or meetings between
18 them.
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1 C-12. The Criminal Code of the Republic of
2 China contains:

3 Article 100 -

4 I. Whoever with the intent to destroy the
5 existing form of Government takes action to seize any
6 part of the territory of the State or by unlawful means
7 to change its Constitution or to overthrow the Govern-
8 ment shall be punished with imprisonment for a period
9 not less than seven years. In the case of a principal
10 plotter, life imprisonment shall be inflicted.

11 II. Whoever conspires or makes preparations to
12 commit an offense specified under the preceding para-
13 graph shall be punished with imprisonment for a period
14 not less than six months nor more than five years.

15 Article 101 -

16 I. Whoever by means of violence commits an
17 offence specified under Paragraph I of the preceding
18 Article shall be punished with imprisonment for life or
19 for a period not less than seven years. In the case of a
20 principal plotter, death or life imprisonment shall be
21 inflicted.

22 II. Whoever conspires or makes preparations to
23 commit an offense specified under the preceding paragraph
24 shall be punished with imprisonment for a period of not
25 less than one year nor more than seven years.

C-13. In the Japanese Criminal Code of 1936,
 1 Article 78 makes it an offense to prepare or conspire for
 2 civil war (defined in Article 77 as an insurrectionary or
 3 seditious act with intent to overthrow the Government,
 4 etc.) and Article 79 makes it an offense to aid or assist^{a.}
 5 in such a conspiracy by furnishing arms, moneys, etc.
 6 Article 81 makes it an offense to conspire with a foreign
 7 power to commence hostilities against the Empire, and
 8 Article 88 deals with preparations and plots to commit^{b.}
 9 that and a number of similar offenses. By Article 2^{c.}
 10 all the above offenses are punishable although committed
 11 outside the Empire. Article 93^{d.} deals with preparations
 12 and plots with intent to wage private war upon a foreign
 13 power. Article 201 makes it an offense in itself to
 14 make preparations with intent to commit murder, without
 15 any further act or attempt.^{e.} Article 237 is in similar
 16 terms with regard to robbery.^{f.} Reference may also be
 17 made to the Japanese Peace Preservation Law,^{g.} which
 18 makes it a crime to organize or join an association with
 19 the object of revolutionizing the national constitution
 20 or to organize or join an association having for its aim
 21

- 22 (C-13. a. Sebald, pp. 55-6.
 23 b. ib. pp. 66-7.
 24 c. ib. p. 2.
 25 d. ib. p. 68.
 e. ib. p. 151.
 f. ib. p. 196.
 g. ib. pp. 359-60.)

1 the disavowal of the system of private property or to
2 confer concerning the accomplishment of particulars
3 forming such object.

4 C-14. In the Japanese Criminal Code, Articles
5 (C-61 deal with complicity and provide that persons who
6 have co-operated in committing a crime or who have in-
7 stigated another to commit it or have abetted an insti-
8 gator are all principals. By decision of the Japanese
9 courts those who have conspired to commit any crime,
10 other than those above mentioned where the conspiracy
11 is made a separate offense, are dealt with as principals
12 in the contemplated offense committed by one of them,
13 or by someone else instigated by one of them. These
14 decisions on these Articles appear to incorporate the
15 whole of the Anglo-American law as stated in Rule 7
16 above.^{a.} It is hardly necessary to cite other authority
17 for the proposition that those are universal rules of
18 proof.

19 C-15. There are certain passages in the Nurem-
20 berg Judgment dealing with the law as to the common plan
21 or conspiracy.^{a.}

22 "In the previous recital of the facts relating
23 to aggressive war, it is clear that planning and
24

25 (C-14. a. ib. pp. 54-58.

C-15. a. Nuremberg Judgment, pp. 42-3.)

1 preparation had been carried out in the most systematic
2 way at every stage of the history.

3 "Planning and preparation are essential to the
4 making of war. In the opinion of the Tribunal aggressive
5 war is a crime under international law. The Charter
6 defines this offense as planning, preparation, initiation
7 or waging of a war of aggression 'or participation in a
8 common plan or conspiracy for the accomplishment . . . of
9 the foregoing.' The Indictment follows this distinction.
10 Count One charges the common plan or conspiracy. Count
11 Two charges the planning and waging of war. The same
12 evidence has been introduced to support both Counts. We
13 shall therefore discuss both Counts together, as they are
14 in substance the same. The defendants have been charged
15 under both Counts, and their guilt arising under each
16 Count must be determined . . . Conspiracy is not defined
17 in the Charter. But in the opinion of the Tribunal the
18 conspiracy must be clearly outlined in its criminal
19 purpose. It must not be too far removed from the time of
20 decision and of action. The planning, to be criminal,
21 must not rest merely on the declarations of a party
22 programme, such as are found in the twenty-five points of
23 the Nazi Party, announced in 1920, or the political
24 affirmations expressed in 'Mein Kampf' in later years.
25 The Tribunal must examine whether a concrete plan to wage

1 war existed, and determine the participants in that con-
2 crete plan.

3 "It is not necessary to decide whether a single
4 master conspiracy between the defendants has been estab-
5 lished by the evidence . . .

6 "In the opinion of the Tribunal, the evidence
7 establishes the common planning to prepare and wage war
8 by certain of the defendants. It is immaterial to con-
9 sider whether a single conspiracy to the extent and over
10 the time set out in the Indictment has been conclusively
11 proved. Continued planning, with aggressive war as the
12 objective, has been established beyond doubt."

13 C-16. In our submission the conspiracies charged
14 here and the evidence satisfy all the conditions there
15 laid down. With regard to the question whether the
16 evidence shows one conspiracy or several, which the
17 Nuremberg Tribunal regarded as immaterial, although there
18 was in that Indictment only one Count of conspiracy, we
19 have adopted a different plan. In Count 1 we have
20 charged a general over-all conspiracy covering not only
21 the whole period but all the various phases which sub-
22 sequently developed although their details might not in
23 the beginning have been foreseen. If you find that con-
24 spiracy proved, as we submit it is, and if you find that
25 each of the accused either was a party to it from the

beginning or joined it later, you may think it unnecessary to consider separately Counts 2-5 inclusive. It would, however, in our submission clearly follow on the evidence that they are proved, and the Tribunal may prefer to deal with them. But if you find Count 1 not proved as a whole, you would then have to consider each of those other Counts separately against all of them. If you found Count 1 proved as a whole, but that one or more of the accused is not proved to have participated to that extent, it would then be necessary to consider whether he did participate, with one or more of the other accused, whether you had found those other accused guilty under Count 1 or not, in one or more of the conspiracies charged in Counts 2-5. By the expression "to that extent" we mean of course in the scope of the conspiracy, not in its duration. In our submission a man who joins the conspiracy late may adopt the fruits of that conspiracy as he finds them and thereby approve after the event a policy which he did not support at that time.

C-17. In this connection we would point out that in the development of a vast conspiracy of this nature there was necessarily from time to time a choice open as to the particular direction in which the advance should be pressed at a particular time or at all, and therefore, as to how many and which countries should be

1 attacked. This choice may have depended on opinion as
2 to the desirability of an attack upon any particular
3 country, or more often only as to its prudence. In our
4 submission if a man joins a conspiracy of the kind
5 alleged in Count 1, he necessarily leaves such matters
6 to be decided by those of his fellow-conspirators who
7 are from time to time in power.. A man who has once
8 joined the conspiracy cannot therefore absolve himself
9 from responsibility for the subsequent actions of his
10 co-conspirators merely by showing that he was not
11 personally in favor of a particular action which they
12 took especially if his opposition was based on merely
13 prudential grounds, provided that action was within the
14 scope of the original conspiracy, and he did not
15 definitely dissociate himself from it.

16 C-18. Having regard to the decision at
17 Nuremberg as to the meaning of the last sentence in
18 their Article 6, corresponding to our Article 5 of the
19 Charter, which we accept, we do not ask for convictions
20 on Counts 44 or 53 of the Indictment; nor on Counts 37
21 and 38 so far as they depend upon clauses (b) and (c) of
22 the Charter. These latter counts are, however, also
23 charged under clause (a), and if you adopt our view that
24 murder is a necessary consequence of aggressive war, we
25 submit that they are rightly so charged. We ask the

1 Tribunal to treat such of those Counts as you may reject
2 merely as explanatory of the Counts which respectively
3 follow them and in some cases incorporate parts of them
4 by reference.

5 C-19. We also ask you to treat that last
6 sentence, as the Nuremberg Tribunal did, as defining the
7 responsibility of individuals and the method of proof on
8 the conspiracy theory applicable to all parts of Article
9 5. Although it is printed in our Charter continuously
10 and not as a separate paragraph, this makes no difference
11 when one observes that items (a), (b) and (c) are all
12 parts of one sentence beginning with "The following acts,
13 or any of them" and ending with "the country where per-
14 petrated." The passage in the Nuremberg Judgment in
15 question reads:
16 a.

17 "Count One, however, charges not only the con-
18 spiracy to commit aggressive war, but also to commit war
19 crimes and crimes against humanity. But the Charter does
20 not define as a separate crime any conspiracy except the
21 one to commit acts of aggressive war. Article 6 of the
22 Charter provides:

23 "Leaders, organizers, instigators and accom-
24 plices participating in the formulation or execution of
25 a common plan or conspiracy to commit any of the fore-
(C-19. a. Nuremberg Judgment, p. 44.)

1 going crimes are responsible for all acts performed by
2 any persons in execution of such plan.'

3 "In the opinion of the Tribunal these words do
4 not add a new and separate crime to those already listed.
5 The words are designed to establish the responsibility
6 of persons participating in a common plan. The Tribunal
7 will therefore disregard the charges in Count One that
8 the defendants conspire to commit war crimes and crimes
9 against humanity, and will consider only the common plan
10 to prepare, initiate and wage aggressive war."

11 C-20. Applying the rule, which in our submission
12 merely states the practical effect of all the rules
13 applied in various countries and summarized above, to the
14 Counts other than conspiracy Counts, the substantive
15 Counts, we offer the following tests of the guilt of each
16 individual on each Count. They fall into the following
17 categories:

18 1. Counts as to which there is direct evidence
19 of participation by the individual in the actual commis-
20 sion of the offense, whether as to the whole, or in the
21 case of a continuing offense, part of its duration, as to
22 which no question can arise if that evidence is accepted.

23 2. Counts as to which there is no such evidence
24 but the event occurred or the conduct continued after the
25 individual is proved to have become a party to the

1 conspiracy. The offense was within the scope of that
2 conspiracy, and there is no evidence of objection by
3 him. For the reasons stated below we submit that in
4 such cases there should be a conviction of that individ-
5 ual on that Count.

6 3. Counts similar to the last named in all
7 respects except that there is some evidence accented by
8 the Tribunal of his disagreement with the action, the
9 subject of the Count. This is discussed below.

10 4. Counts relating to events or conduct which
11 were completed before the individual is found to have
12 joined the conspiracy, as to which we do not claim a
13 conviction, although from the conspiracy point of view
14 he must be held to have adopted them.

15 5. Counts in which the individual is not
16 charged, and therefore of course cannot be convicted.

17 C-21. In considering the second and third of
18 these categories it is important to draw a distinction
19 between conspiracy as a separate crime, and as the
20 method of proof of a crime alleged to have been committed
21 by several persons jointly. The principles are similar
22 but the application of them is different. We submit that
23 in the legal system of most if not all countries these
24 principles are applied to a joint crime, even if it is
25 not one the conspiracy to commit which is a separate

1 crime by the law of that country. Once two or three
2 persons have agreed to commit a crime, each of them is
3 responsible for all subsequent acts and words of the
4 others done or uttered within the scope and for the
5 purposes of that agreement, and if the crime is actually
6 committed by any of them all can be convicted of it.
7 Where the agreement is that if, in the course of pur-
8 suing an object, which may or may not itself be a crime,
9 certain circumstances arise, a crime or further crime
10 shall then be committed, and in those circumstances it
11 is then committed in accordance with the agreement by
12 any of them, all can be convicted of that crime or
13 further crime and each is bound by the decision of the
14 others as to whether it shall actually be committed or
15 not. For instance, if two or more plan or set out to
16 commit robbery and agree that anyone who resists them
17 shall be shot, and one of them does shoot such a person,
18 all can be convicted of murder as well as of the robbery.
19 Equally if they plan or set out to achieve an object
20 which is not in itself a crime and agree that if neces-
21 sary for that purpose a certain crime shall be committed,
22 and one of them does commit it, all can be convicted of
23 it. These principles, which we submit are generally
24 recognized, cover the cases in category 2.
25

1 C-22. By English law a principal in the
2 second degree (i.e., one who is present aiding and
3 abetting) and an accessory before the fact (i.e., one
4 who is absent, but has procured or conspired with
5 another to commit the crime which the other does
6 commit) are in general all subject to the same punish-
7 ment, and may be charged as principals, and convicted
8 with or without the principal in the first degree.^a
9 The American law is the same. That of other countries
10 varies in the mode of charge, but is in substance to
11 the same effect.

12 C-23. The more difficult question is, what
13 must one of them do to escape from these consequences
14 if he does not actually take part in committing the
15 ultimate crime. There are some cases here where one
16 of the accused, having as we submit entered into one
17 of the conspiracies charged, and taken part in the
18 preparation for committing the offenses alleged, was
19 out of office when the actual offense, e.g., of
20 initiating or waging a particular war, was committed.
21 In our submission he can be convicted of those latter
22 offenses, as well as of the conspiracy and preparation.
23 The mere fact of his inability, because of his loss of
24

25 C-22.

a. Archbold's Criminal Pleading, 30th Ed.
pp. 1445-52; especially pp. 1454-5.

office, to take part in the final decision to commit
 1 that offense cannot absolve him, provided it is within
 2 the class of offenses which he has agreed to commit.
 3 He must be taken to have delegated to his successors
 4 in the direction of the conspiracy the choice of which
 5 country and when to attack. In this connection we
 6 may quote the following U.S. decision:^a.

7 "The general rule is that where an overt
 8 act is essential to a conspiracy, a conspirator may
 9 avoid guilt by withdrawing from the conspiracy prior
 10 to the commission of an overt act, 15 C.J.S. Conspiracy,
 11 Section 78, p. 110. However, when once a conspiracy
 12 is shown to exist, which is not ended merely by lapse
 13 of time, it continues to exist as to all persons
 14 involved until there is shown some affirmative act of
 15 withdrawal by the persons who attempt to evade re-
 16 sponsibility for the acts and declarations of their
 17 co-conspirators after the withdrawal. (Hyde v. United
 18 States, 225 U.S. 347, 32 S.Ct. 793, 56 L. Ed. 1114, Ann.
 19 Cas. 1914A, 614; local 167, etc., et al. v. United
 20 States, 291 U.S. 293, 298, 54 S.Ct. 396, 78 L. Ed.
 21 181; United States v. Rollnick, 2 Circ., 91 F. 2d 911,
 22

23 C-23.

24 a. United States v. Beck
 25 Rehearing denied March 27, 1941.
 Writ of certiorari denied June 2, 1941.
 See 61 S.Ct. 1121, 85 L.Ed. 118 F (2d) 178, 184 --
 C.C.A., 7th Cir.

1 918; United States v. Anderson, 7 Cir., 101 F. 2d
2 325, 331; and United States vo Weiss, 2 Cir., 103 F.
3 2d 348, 354). Here the scheme was to continue over
4 a long period of time. In such a case where the
5 conspiracy is proved, the acts and declarations of
6 one of the conspirators towards the accomplishment of
7 the unlawful scheme are the acts of all. Bogy v.
8 United States, 6 Cir., 96 F. 2d 734, 741....."

9 C-24. The last case is that of an accused
10 who may satisfy the Tribunal that he objected to the
11 initiation of a particular war, or even strove to
12 prevent it or to stop it. If he was in office at
13 the time, allowed his scruples to be overruled, and
14 continued in office, we submit that quite clearly he
15 should be convicted, and that in a moral point of
16 view his case is at least as bad as that of one who
17 had no such scruples. This is all the more true if
18 the ground of his objection was not that the initiation
19 or waging of such a war was illegal, or immoral, but
20 merely that he doubted its success or considered it
21 premature. He could, if he was so minded, have
22 absolved himself from the responsibility by resigning,
23 or still more effectively if he was a cabinet minister,
24 by refusing either to agree or resign, in which case
25 the whole cabinet would have had to resign and the war

1 might thus have been prevented. This case really
2 falls in category 1 rather than 3. If he was out of
3 office at the time and made clear his objection to the
4 particular war to the extent of dissociating himself
5 from the conspiracy although it was within the scope
6 of the original agreement, we would concede that he
7 should not be convicted of the offense of initiating
8 or waging that particular war.

9 If the Tribunal please, I will now ask my
10 friend, Mr. Horwitz, to continue with the reading.

11 MR. HORWITZ: May it please the Tribunal.

12 B. THE CONSPIRACY

13 2. THE CONSPIRACY TO OBTAIN DOMINATION OF
14 THE ASIATIC AND PACIFIC AREAS.

15 D-1. The conspiracy with which the accused
16 are charged in Count I is at the same time both very
17 simple and very complex. From the point of view of
18 the unity of its aggressive object and purpose in both
19 time and space, from the point of view of the clarity
20 of its enunciation; at first semi-secretly, and then
21 more and more openly until ultimately it was blatantly
22 announced to the world under a euphonious title which
23 concealed nothing; and from the point of view of the
24 singleness and constancy of the drive toward its
25 effectuation, at an ever-increasing tempo, upon an

1 ever-expanding scale, until it had made every Japanese
2 an unwitting tool of the conspiracy and had embroiled
3 almost the entire world in its greatest war, the con-
4 spiracy is quite simple although of tremendous scope
5 and design. Broadly speaking, the conspiracy, which
6 the prosecution submits has been fully established by
7 the evidence, may be described as follows: During
8 the period from January 1, 1928 to September 2, 1945,
9 the conspirators, including these accused and others,
10 some of whom have been named in the course of these
11 proceedings, entered into, and attempted to and did,
12 in large measure, carry out a common plan whereby under
13 the pretext of an incident to be created Japan would
14 invade, conquer, enslave and exploit that part of
15 China known as Manchuria, with the object and purpose
16 of using Manchuria and its great natural resources and
17 wealth as a springboard and base for securing military,
18 naval, economic, political and social possession,
19 domination, control and exploitation of East Asia and
20 the Pacific and Indian Oceans and the islands therein,
21 including the rest of China, French Indo-China, the
22 Netherlands East Indies, Malaya, the Philippines, India,
23 Burma and Australia. It was part of the plan, in
24 order to bring it to successful fruition, that the
25 conspirators should accomplish their aim and purpose

1 internally within Japan by seizing and obtaining
2 control of the government of Japan either through
3 coup d'etat or through the gradual infiltration of
4 the members of the conspiratorial body throughout all
5 the high posts in Japan's political structure; and
6 externally by wars of aggression, in violation of
7 international law, treaties, agreements and assurances,
8 to be carried out by Japan alone or in conjunction
9 with other powers against any and all nations which
10 stood in the way of accomplishment of the criminal
11 objects and purposes of the conspirators.

12 D-2. However, from the point of view that
13 in time the conspiracy covered a long period of
14 history and that it involved thousands of events of
15 all degrees of importance; from the point of view that
16 the number of conspirators were large and that some
17 entered the conspiracy at its inception and remained
18 with it till the end, while others, without repudiating
19 the conspiracy, dropped into an inactive status, while
20 others joined actively into the conspiracy at some mid-
21 point in its course, while still others played active
22 roles at one time, dropped out for a while and then re-
23 appeared as active participants; and from the point of
24 view, as might be expected in any conspiracy so huge in
25 point of time and of scope, of the internal conflicts

1 between the conspirators, not over any part of the
2 conspiracy itself, but over the question of proper
3 timing of particular facets of the conspiracy, the
4 story is quite complex. In order to summarize in the
5 simplest form possible the facts of the conspiracy
6 established by the thousands of documents and the
7 testimony of hundreds of witnesses which, perforce,
8 had to be introduced in this proceeding, the prosecu-
9 tion, preserving in the main the fundamental chrono-
10 logical continuity of the story, except where the
11 exigency of the situation dictates a topical analysis
12 for purposes of clarity, will analyze the conspiracy
13 in four successive steps: (1) The first step in the
14 conspiracy-obtaining control of Manchuria; (2) The
15 expansion of control and domination from Manchuria to
16 all the rest of China; (3) The preparation of Japan
17 for aggressive war internally and by alliances with the
18 Axis Powers; (4) The further expansion of the conspir-
19 acy into the rest of East Asia and the Pacific and
20 Indian Oceans by further aggressive wars.

21 PART I OF THE CONSPIRACY.

22 OBTAINING CONTROL OF MANCHURIA.

23 A. THE SITUATION PRIOR TO THE MUKDEN INCIDENT,

24 18 SEPTEMBER 1931.

25 D-3. To fully understand the true nature of

1 the conspiracy and the aggressive acts of the con-
2 spirators, they must be seen clearly against the
3 background in which they began and out of which they
4 grew. We must, therefore, first examine the obliga-
5 tions which Japan had assumed towards China and others,
6 the rights which she had acquired in Manchuria and
7 the actual situation as it existed in Manchuria,
8 China, and Japan at the time the Mukden Incident
9 started the processes of aggression into movement.

10 1. JAPAN'S OBLIGATIONS TOWARDS CHINA
11 AND OTHER NATIONS

12 D-4. Japan's obligations towards China and
13 other nations were defined by the treaties which she
14 had signed and ratified. The treaties, which stood
15 in the way of an easy and early achievement of the
16 main objective of the conspirators, fall roughly into
17 three categories: (1) Agreements dealing especially
18 with China; (2) Agreements defining Japan's duties
19 and obligations with other countries; and (3) Agree-
20 ments designed to prevent the use of war as a
21 legitimate instrument of effectuating changes in
22 international affairs.

23 D-5. With respect to treaties relating to
24 China, Japan and Russia, by the Treaty of Portsmouth
25 of September 5, 1905, both agreed that they would

1 evacuate Manchuria completely and simultaneously,
2 excepting the territory affected by the lease of the
3 Liaotung (Kwantung) Peninsula, would restore Manchuria,
4 excepting the leased territory, completely to the
5 exclusive administration of China, and engaged not
6 to obstruct any general measures common to all countries
7 which China might take for the development of the
8 commerce and industry of Manchuria.^a In this category
9 Japan also had treaties with other powers. However,
10 while there were many which provided for the respect-
11 ing of China's territorial integrity and the "open
12 door" policy, the essential duties and obligations
13 of Japan and the other contracting powers with respect
14 to China had all been codified and were contained in
15 the Nine Power Treaty to which the United States,
16 Great Britain, Belgium, China, France, Italy, Japan,
17 The Netherlands and Portugal were parties.^b These
18 duties and obligations were set forth in plain and
19 simple language easily comprehended and requiring no
20 high degree of skill to ascertain its meaning, in the
21 following provisions of the Treaty:

22 "Article I.

23 "The Contracting Powers, other than China

24 D-5.

25 a. Ex. 21, T. 513.

b. Ex. 28, T. 513.

agree:

1 "(1) To respect the sovereignty, the
2 independence, and the territorial administrative
3 integrity of China;

4 "(2) To provide the fullest and most unembar-
5 rassed opportunity to China to develop and maintain
6 for herself an effective and stable government;

7 "(3) To use their influence for the purpose
8 of effectually establishing and maintaining the prin-
9 ciple of equal opportunity for the commerce and
10 industry of all nations throughout the territory of
11 China;

12 "(4) To refrain from taking advantage of
13 conditions in China in order to seek special rights
14 or privileges which would abridge the rights of sub-
15 jects or citizens of friendly States, and from
16 countenancing action inimical to the security of such
17 States.

18
19 "Article II.

20 "The Contracting Powers agree not to enter
21 into any treaty, agreement, arrangement or understand-
22 ing, either with one another, or, individually or
23 collectively, with any Power or Powers which would
24 infringe or impair the principles stated in Article I.
25

 "Article III.

1 "With a view to applying more effectually
2 the principles of the Open Door or equality of oppor-
3 tunity in China for the trade and industry of all
4 nations, the Contracting Powers, other than China,
5 agree that they will not seek, nor support their
6 respective nationals in seeking:

7 (a) Any arrangement which might purport
8 to establish in favor of their interests any general
9 superiority of rights with respect to commercial or
10 economic development in any designated region of
11 China;

12 (b) Any such monopoly or preference as
13 would deprive the nationals of any other Power of the
14 right of undertaking any legitimate trade or industry
15 in China, or of participating with the Chinese
16 Government, or with any local authority, in any
17 category or public enterprise, or which by reason of
18 its scope, duration, or geographical extent is calcu-
19 lated to frustrate the practical application of the
20 principle of equal opportunity.

21 "It is understood that the foregoing stipu-
22 lations of this Article are not to be so construed as
23 to prohibit the acquisition of such properties or
24 rights as may be necessary to the conduct of a partic-
25 ular commercial, industrial, or financial undertaking,

or to the encouragement of invention and research.

1 "China undertakes to be guided by the prin-
2 ciples stated in the foregoing stipulations of this
3 Article in dealing with applications for economic
4 rights and privileges from the Governments and nation-
5 als of all foreign countries, whether parties to the
6 present Treaty or not.

7 "Article IV.

8 "The Contracting Powers agree not to support
9 any agreements by their respective nationals with
10 each other designed to create Spheres of Influence
11 or to provide for the enjoyment of mutually exclusive
12 opportunities in designated parts of Chinese territory."
13

14 D-6. In addition to these specific obliga-
15 tions with respect to China, Japan had other obliga-
16 tions with respect to the Far East and the Pacific
17 under the provisions of the second class of treaties.
18 In the Treaty of November 30, 1908,^a with the United
19 States, Japan and the United States had declared that
20 their policy was directed to the maintenance of the
21 existing status quo in the Far East and the defense of
22 the principles of equal opportunity for commerce and
23 industry in China, and had undertaken to respect each

24 D-6.

25 a. Ex. 22, T. 513.

1 other's territorial possessions in the Far East. On
2 December 13, 1921, Great Britain, France, Japan and
3 the United States (later joined by The Netherlands
4 and Portugal) had entered into a treaty wherein they
5 agreed to respect each other's rights in relation to
6 their insular possessions and dominions in the
7 region of the Pacific Ocean, and in the event that
8 a controversy arose out of any Pacific question
9 involving those rights, which could not be settled
10 satisfactorily by diplomacy, to invite the other
11 parties to join a conference to which the entire
12 matter would be submitted for consideration and ad-
13 justment.^{b.} In the mandate of the League of Nations,
14 Japan had agreed that the islands covered by her
15 mandate should not be fortified;^{c.} and thereafter
16 by the Treaty of February 11, 1922, had extended the
17 benefits of this undertaking to the United States and
18 its nationals.^{d.}

19
20 D-7. Over and above the obligations just
21 mentioned, Japan had also firmly committed herself in
22 a series of treaties to the renunciation of war as an
23 instrument of national policy. In the Hague Convention
24 for the Pacific Settlement of International Disputes

25 D-6.

b. Ex. 24, T. 513.

c. Ex. 23, T. 513.

d. Ex. 29, T. 513.

1 of July 29, 1899,^a Japan had agreed to use her best
2 efforts to insure pacific settlement of international
3 differences, and in case of conflict, before appealing
4 to arms, to have recourse, so far as circumstances
5 would allow, to the good offices or mediation of a
6 friendly power. By signing the Covenant of the
7 League of Nations, Japan undertook to respect and
8 preserve against external aggression the territorial
9 integrity and political independence of the members of
10 the League, and agreed that if any dispute arose with
11 a member of this League, to submit the matter to
12 arbitration or enquiry by the Council, and in no
13 case to resort to war until three months after the
14 award or report.^b In the Kellogg-Briand Pact of
15 August 27, 1928,^c Japan and the other signatories had
16 condemned recourse to war for the solution of inter-
17 national controversies, renounced it as an instrument
18 of national policy, and agreed that the settlement or
19 solution of all disputes or conflicts of all kinds
20 should never be sought except by pacific means.
21

22 D-7.

23 a. Ex. 12, T. 513.

24 b. Ex. 23, T. 513.

25 c. Ex. 32, T. 513.

2. JAPAN'S RIGHTS IN MANCHURIA

1 D-8. While Japan had certain well defined
2 obligations toward China, she also had acquired certain
3 rights in that part of China known as Manchuria. By the
4 Treaty of Portsmouth of 1905 Japan had succeeded to
5 certain rights of Russia in Manchuria.^a In 1896, as
6 part of a secret defensive alliance with China, Russia
7 had been granted the right to carry the Trans-Siberian
8 Railway from Vladivostok to China through Manchuria,
9 to be used to transport Russian troops in case Japan
10 should attack China.^b In 1898 Russia secured a twenty-
11 five year lease for the southern part of the Liaotung
12 Peninsula and the right to connect the Chinese Eastern
13 Railway with Port Arthur and authority to build a naval
14 port there.^c By the Treaty of Peking of December 1905
15 China consented to the transfer from Russia to Japan of
16 the Kwantung leased territory and of the southern half
17 of the Russian controlled Chinese Eastern Railway north
18 to Changchun, and granted to Japan the right to improve
19 the railway between Antung and Mukden and to operate it
20 for fifteen years.^d The Lytton Commission found that

D-8

- 23 a. Ex. 21, T. 513
24 b. Ex. 57, T. 18728
25 c. Ex. 57, T. 18279
d. Ex. 57, T. 1757-8

with respect to the leased territory, Japan had practically full sovereign rights.^e In August 1906 Japan organized the South Manchurian Railway Company, a government controlled corporation, which was given administrative functions, and was allowed to levy taxes and engage in other branches of business.^f In 1910, through annexation of Korea, Japan succeeded to Korea's jurisdiction over Korean settlers.^g By the Treaty and Note of Peking of May 25, 1915, a result of Japan's "Twenty-One Demands", the terms of the leases for the leased territory, including Port Arthur and Dairen, and of the South Manchurian (formerly Chinese Eastern) and Antung-Mukden Railways were extended to ninety-nine years.^h By this treaty, the Japanese also acquired in South Manchuria the right to lease land needed to erect buildings for trade and manufacture or to carry on agriculture, and the right of freedom of travel, residence and occupation.ⁱ The Japanese, however, were required not only to register their passports but also to submit to the police, laws and ordinances, and taxation of China.^j

D-8

- e. Ex. 57, T. 1760-1
- f. Ex. 57, T. 1758
- g. Ex. 57, T. 1758
- h. Ex. 57, T. 1759; Ex. 2383, T. 19133.
- i. Ex. 57, T. 1760; Ex. 2383, T. 19133.
- j. Ex. 2383, T. 19133.

3. THE SITUATION IN CHINA.

1 D-9. However, the rights acquired by Japan in
2 Manchuria were not unopposed. This was not something
3 to be unexpected in view of the conditions under which
4 these rights had been acquired by Japan. It is one of
5 the well known facts of modern world history, requiring
6 no citation to support it, that China, following the
7 collapse of the Ching Dynasty in 1908, went through the
8 trying transition to a modern national state. Due to
9 the inadequate communication system in the vast terri-
10 tory of China, a serious handicap for maintaining law
11 and order,^a an ancient social system in which the unit
12 of allegiance was the family and not the nation, and an
13 antiquated, wholly inadequate decentralized system of
14 finance, it was only natural that China should go through,
15 in its emergence from a feudal civilization to a modern
16 nation, a period of internal conflict. It was precisely
17 during this period of the disintegration of the Ching
18 dynasty and the period of internal conflict that Japan
19 obtained its rights in Manchuria. In 1915, taking
20 advantage of the fact that the nations which had opposed
21 Japan's expansionist ideas in Manchuria in 1895^b were
22 then either at war with Japan or allied with Japan in
23

24 D-9

25 a. Ex. 57, T. 18629

b. Ex. 2380, T. 18779; Ex. 2381, T. 18781;
Ex. 2382, T. 18787.

1 World War I and were therefore in no position to object,
2 Japan obtained an extension of its former leases and a
3 grant of new rights in South Manchuria.

4 D-10. It was a natural concomitant of China's
5 emergence as a modern state that China should develop
6 an intense feeling of nationalism which, as has occurred
7 in every other nation in its transition to a modern
8 state, was reflected in intense anti-foreignism.^a

9 The anti-foreignism was expressed in economic boycotts
10 and anti-foreign propaganda in the schools.^b This new
11 feeling of nationalism was particularly directed toward
12 Manchuria. The area known as Manchuria had in the course
13 of history since the Manchu conquest of China become
14 unalterably Chinese territory.^c A peaceful and incon-

15 spicuous occupation by Chinese had taken place so that
16 by 1931 out of the total Manchurian population of

17 30,000,000, 28,000,000 were Chinese, 800,000 Koreans,
18 150,000 Russians, 230,000 Japanese, and a few Mongols.^d

19 After 1917 China began to take a more active interest
20 and part in the government and development of Manchuria.^e

21 In 1918 Chang Tso-Lin, who had in 1916 as military governor

22 D-10

23 a. Ex. 57, T. 18683

24 b. Ex. 57, T. 18688

25 c. Ex. 57, T. 1739

d. Ex. 57, T. 1739-40

e. Ex. 57, T. 1740

1 of Fengtien Province declared his province independent
 2 of the central government in Peking, had withdrawn his
 3 declaration and had become Inspector-General of all
 4 Manchuria.^f While he again withdrew his allegiance
 5 in 1922 and continued the withdrawal until his death,^g
 6 he did not alter Manchuria's actual relation to China.
 7 The Lytton Commission found that through all its wars
 8 and periods, Manchuria remained an integral part of
 9 China.^h After the death of Chang Tso-Lin, his son
 10 Chang Hsueh-Liang became the ruler of Manchuria, and
 11 in December 1928, desiring to stop the internal conflict
 12 and help unify China, he declared allegiance to the
 13 central government and became commander-in-chief of the
 14 Northeastern Frontier Army and chief of the administra-
 15 tion of Manchuria and Jehol.ⁱ After this union both
 16 the political and economic ties between China and
 17 Manchuria were strengthened,^j with China playing a
 18 larger role in developing the economic resources of
 19 Manchuria and in the commerce and finance of Manchuria.^k

20 D-11. While China's emergent nationalism was
 21 being expressed in closer and closer ties with Manchuria,
 22

23 D-10

- 23 f. Ex. 57, T. 1744
 24 g. Ex. 57, T. 1745-53
 25 h. Ex. 57, T. 1749
 i. Ex. 57, T. 18718-9
 j. Ex. 57, T. 18727
 k. Ex. 57, T. 18725-7

Japan was developing a new concept with respect to Manchuria. She began to claim a special position in Manchuria, a claim which later grew into Japan's averment that Manchuria was the lifeline of Japan. This claim was not based solely on the rights legally defined in Japan's extraordinary treaties with China, but a real part of it was based on intangibles such as feelings, historical associations and pride in Japan's achievements.^a The Lytton Commission pointed out that it was natural that Japan's use of the language "special position" should be obscure and that other states had found it difficult to recognize this special position.^b It is respectfully submitted that while the language was obscure, there was nothing obscure about the purposes for which Japan claimed her special position, and the only obscurity lay in the choice of language deliberately designed to hide those purposes. Japan's special position was based on two factors -- strategic and economic. Strategically, Manchuria was of tremendous importance to Japan. It lay as a bulwark between Korea, a Japanese possession, and the Soviet Union,^c and it formed an excellent entry and starting point for a movement either south into the

D-11

- a. Ex. 57, T. 18735
- b. Ex. 57, T. 18735
- c. Ex. 57, T. 18734

rest of China or north into the Soviet Far East.

Economically, Manchuria is tremendously rich with vast areas of fertile soil for the growth of agricultural products, heavy timbered areas and huge deposits of coal and other minerals including iron, gold, oil shale, dolomite, magnesite, limestone, and fireclay^d -- rich in the materials needed for war and conquest.

D-12. Based on this claim of special position, Japan later claimed, as do the accused in this trial, that China was menacing Japan's national defense. Without pointing out, or being able to point out, any specific treaty provision or any long period of conduct by which China accorded to Japan any right to use Manchuria as a point of defense against the Soviet Union, Japan assumed she had that right and accused China of menacing it. She accused China of menacing Japan's national defense by supporting communism and failing to keep law and order. With respect to communism, it is true that for a short period prior to 1927 the communists were permitted to participate in the government,^a but in 1927 the national leaders decided that communism was a menace and began to fight against it, with the result that by July 1931 the communist strong-

D-11

d. Ex. 57, T 18710-11

D-12

a. Ex. 57, T. 18694-9

holds had been taken and the communists were in retreat,
1 having been driven by Generalissimo Chiang Kai-shek into
2 the mountains.^b However, with the outbreak of September
3 18, China was compelled to suspend the offensive against
4 the communists and withdraw a large part of her troops,
5 and the communists thereupon resumed the offensive.^c
6 Thus, at the time Japan was complaining of the communist
7 menace in China, China had the communists well in hand,
8 only to lose her dominance over them because of Japanese
9 action. The charge of failure to enforce law and order
10 was based on the existence of banditry in China. How-
11 ever, the Lytton Commission, after studying the situa-
12 tion, found that while banditry might disturb the
13 internal peace, it was no longer a menace to the Central
14 Government of China.^d It would, therefore, be expected
15 that banditry would have progressively disappeared.
16

17 D-13. With nationalism in China becoming
18 stronger daily, with China's ties with Manchuria becom-
19 ing closer, and with Japan maintaining her right to a
20 special position in Manchuria, one might well expect
21 the appearance of points of friction. On the one hand,
22 China consistently denied the validity of the 1915 Treaty,
23

24 D-12

- 25 b. Ex. 57, T. 18699-701
c. Ex. 57, T. 18702
d. Ex. 57, T. 18693-4

1 charging it had been obtained by duress, and demanded
2 its abrogation.^a On the other hand, the Japanese
3 complained bitterly that the Chinese were violating
4 the treaties, particularly in agitating for the return
5 of the leased territory and the South Manchurian Railway,
6 and in failing to accord to the Japanese the rights of
7 residence, travel, occupation and leasing of land in
8 South Manchuria.^b One pressing question was the
9 treatment of the Koreans resident in Manchuria based on
10 differences of interpretation of the various treaties
11 between China, Korea and Japan,^c as a result of which
12 the Chinese police came into conflict with the Japanese
13 in enforcing Chinese law.^d As to many of the points
14 of conflict, Baron SHIDEHARA, Foreign Minister
15 before and at the time of the Manchurian Incident,
16 testified on cross-examination that they involved
17 economic matters and policy which he believed could
18 have been solved, while others were police matters.^e

22 D-13

- 23 a. Ex. 57, T. 18738-9
24 b. Ex. 57, T. 18740-44
25 c. Ex. 57, T. 18745-61
d. Ex. 57, T. 18753
e. T. 1350-1

4. THE SITUATION IN JAPAN PRECEDING THE
MANCHURIAN INCIDENT.

D-14. To meet the conditions existing in Manchuria, Japan prior to the Mukden Incident had two different policies. During the period from the Washington Conference until April 1928, she followed the "Friendship policy" based on good will and neighborliness. ^{a.} During the period from April 1927

to July 1929, under the ministry of Prime Minister TANAKA, Japan followed the "Positive Policy" which rested upon military force with respect to Manchuria. ^{b.}

This "Positive Policy" placed great emphasis on the necessity for regarding Manchuria as distinct from the rest of China and contained a declaration that if disturbances spread to Manchuria and Mongolia, thus menacing Japan's special position, Japan would defend them. The TANAKA policy asserted that Japan herself would undertake to preserve peace and order in Manchuria in contrast with the friendship policy which limited the objective to the protection of Japanese interests. ^{c.}

D-14

- a. Ex. 57, T. 1764
- b. Ex. 57, T. 1764.
- c. Ex. 57, T. 1764-5;
Ex. 169, T. 1765;
Ex. 170, T. 1768;
Ex. 171, T. 1768-9.

1 D-15. The TANAKA Cabinet went further in
 2 its policy than merely making declarations. It in-
 3 tervened in the affairs of Manchuria. According to
 4 Baron OKADA, the Navy Minister in the TANAKA Cabinet,
 5 it was the policy of TANAKA to advance peacefully
 6 into Manchuria and then by degrees into China.^{a.} It
 7 was the policy of the TANAKA Cabinet to expand and
 8 develop Japanese rights in Manchuria to the fullest
 9 extent by collaborating with, aiding, and using
 10 Chang Tso-lin.^{b.} In 1928, after Chang Tso-lin had
 11 been defeated by the Kuomintang Army, he was advised
 12 by TANAKA to withdraw his armies with the declared
 13 object of saving Manchuria from civil war. This ad-
 14 vice was resented but followed.^{c.} Enroute from Peking
 15 to Mukden on June 3, 1928, Chang Tso-lin was killed
 16 in a train wreck caused by an explosion.^{d.} The
 17 Lytton Commission reported that the responsibility
 18 for this murder had never been established but that
 19 there was a suspicion of Japanese complicity.^{e.} The
 20 uncontradicted evidence before this Tribunal, however,
 21 shows that the Japanese Government had established
 22 the responsibility and shown it to be with the Japan-
 23 ese. Baron OKADA, Navy Minister in the TANAKA Cabinet,
 24

D-15

a. T. 1835.

b. Ex. 175, T. 1816-7

c. Ex. 57, T. 1752

d. Ex. 57, T. 1752

e. Ex. 57, T. 1753

testified that by 1928 the Kwantung Army in Manchuria had become dissatisfied with the TANAKA policy of collaboration and desired to use force to occupy Manchuria, and that a clique of its officers had planned and plotted the murder.^{f.} TANAKA, Ryukichi, former chief of the Military Service Bureau, found in 1942 in the files of his office a report made in August 1928 by General MINE of the Tokyo Military Police Unit, which showed that the murder was planned by Colonel KAWAMOTO, senior staff officer of the Kwantung Army. The report revealed that the Kwantung Army wanted to rid itself of Chang Tso-lin and to set up a new state separated from the Nanking Government under Japanese control. When this plan was banned, KAWAMOTO endeavored to get rid of Chang Tso-lin and succeeded. The report showed that the purpose of the plan was to create a new regime by separating the area from the Nanking Government and getting rid of the war lords.^{g.} This report confirmed to TANAKA what he had already heard about the killing in 1929 from Captain OZAKI, who had issued the mustering order,^{h.} and what he had heard in 1935 about the killing and its purpose from KAWAMOTO.^{i.} This testi-

D-15

f. Ex. 175, T. 1817-8
 g. T. 1949-1953
 h. T. 1957-8

1. T. 1954
 j. 1. 3014-6

mony was also confirmed by MORISHIMA of the consulate at Mukden.^j The planning and execution of the murder of Chang Tso-lin is of the utmost importance in this case. In the first place, it is the first overt act in the conspiracy to carry out the objective of the conspiracy. While it may be contended that these particular accused have not been shown to have participated in this particular incident, it must be borne in mind that the killing of Chang Tso-lin grew out of the program of the Kwantung Army; and when one considers the role played subsequently by the Kwantung Army, pursuant to this same program and policy, in carrying forward the conspiracy, the only inference, it is submitted, that can be drawn is that the killing of Chang Tso-lin was the first, though abortive, act in effectuating the conspiracy. Furthermore, the incident is important because, as OKADA pointed out, it was the first overt act by the Army to project itself into the formulation of government policy,^k and because it shows that the army was already strongly enough entrenched so as to be able to defy the government. OKADA testified that upon hearing of the incident, the Premier, the Emperor and Minister of War SHIRAKAWA all agreed that strong

D-15 k. Ex. 175, T. 1818

1 disciplinary action should be taken to maintain
 2 discipline in the army. However, there was strong
 3 opposition in the General Staff towards punishing
 4 those responsible. The result was that the issue
 5 became controversial and the TANAKA Cabinet was
 6 forced to resign.^{1.}

7 D-16. With the resignation of the TANAKA
 8 Cabinet in July 1929, and the accession of the
 9 HAMAGUCHI, and the WAKATSUKI Cabinets, the "Friend-
 10 ship Policy" was again adopted by Foreign Minister
 11 SHIDEHARA and was continued until September 1931.^{a.}
 12 This policy met with marked success, so that by the
 13 end of his term SHIDEHARA found that the Chinese boy-
 14 cott movement advocating no trade with Japan had be-
 15 gun to decrease steadily until the boycott policy
 16 was almost discontinued, as he had hoped.^{b.}

17 THE PRESIDENT: We will recess for fifteen
 18 minutes.

19 (Whereupon, at 1445, a recess was
 20 taken until 1500, after which the proceed-
 21 ings were resumed as follows:)
 22
 23

24 D-15.

25 1. Ex. 175, T. 1819-20

D-16

a. Ex. 57, T. 1764
 b. T. 1350.

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Captain Kraft.

4 LANGUAGE ARBITER (Captain Kraft): If the
5 Tribunal please, the following language corrections
6 are submitted: Exhibit No. 3520, Article I, 1st
7 paragraph, line 3, delete "not" and substitute "also."

8 Exhibit No. 3877, line 1, insert double
9 quotes before "When", line 2 delete double quotes
10 before "As" and insert single quote. Line 5 delete
11 double quotes after "plan" and delete the bracket
12 before the word "The". Line 6 delete the colon after
13 "was" and insert a comma. Delete double quotes before
14 "To" and insert a single quote; insert the word
15 "probably" between "there" and "is"; and line 8 delete
16 the double quotes and the bracket after "nations": and
17 insert single quote followed by . . ."

18 These corrections affecting exhibit No. 3877
19 are also to be made on record page 38,675, lines 7 to
20 16.

21 THE PRESIDENT: Thank you, Captain Kraft.
22 Judge Hsiang.

23 JUDGE HSIANG: I will continue reading.

24 B. THE MUKDEN INCIDENT AND ITS AFTERMATH.

25 1. EVENTS LEADING UP TO THE INCIDENT

D-17. Despite the failure of their first precipitate attempt to obtain forcible possession of Manchuria, and despite the further fact that their action brought about the downfall of the TANAKA Cabinet and the abandonment of the TANAKA policy of obtaining Japan's desires in Manchuria by peaceful means, the conspirators did not abandon their project. On the contrary, they used the next two years to plot, plan and agitate for the next step in their conspiracy. The plotting and planning followed so closely upon the murder of Chang Tso-Lin, and involved so many of the same people who were later involved in the Mukden Incident, that we cannot escape the conclusion that all the activity during the period from the murder of Chang Tso-Lin until the Mukden Incident was all part of one conspiracy. However, even if by some odd coincidence in the series of odd coincidences urged as a defense in this case, the Chang Tso-Lin murder was not the first overt act in the conspiracy, the activity from 1929 on, involving many of the same persons as were involved in the Mukden Affair, including some of the present accused, was definitely part of the conspiracy charged and had as its purpose the furtherance of that conspiracy. The activity was carried on by the Army in Japan, the Kwantung Army and civilians.

D-18. In the General Staff, the leader was General TATEKAWA. In 1929, while serving in Peiping, TATEKAWA, after telling TANAKA, Ryukichi, that Manchuria should be placed under Japanese control and made into a state self-sustaining except for oil, sent TANAKA to Manchuria to investigate. When TANAKA reported that this plan was not feasible, TATEKAWA stated that efforts should be made to make Manchuria self-contained. TATEKAWA felt strongly that unless Manchuria was seized by Japan, Japan could not become one of the powers of the world. In April 1929 there was distributed to the Chiefs of Staff, at a conference, a plan for establishing self-sufficiency in Manchuria to impress upon them the fact that Manchuria was Japan's lifeline. In 1929, it was found that the Investigation Section of the Kwantung Army was insufficient to probe into the resources of Manchuria and the sentiments of the people and to obtain other information, and the witness TANAKA was asked to make every effort to enlarge the China and Manchuria Investigation Section of the War Ministry. On April 1, 1930, he succeeded in having created the General Investigation Section.

(D-18. a. T. 2,002-3.
b. T. 2,003
c. T. 2,003, 2,067
d. T. 2,094-5.)

1 D-19. In October 1930, the Sakurakai was
 2 organized by lieutenant-colonels and majors from the
 3 War Office, the General Staff and the Office of the
 4 Inspector-General of Military Education under the leader-
 5 ship of the accused. HASHIMOTO.^a According to the
 6 report of the Police Affairs Bureau of the Home Minis-
 7 try, the purpose of the society was national reorganiza-
 8 tion for the attainment of which the Society was ready
 9 to use armed force.^b In January 1931 work had begun
 10 on the drafting of a concrete plan by Lieutenant-
 11 Colonels SAKATA, NEMOTO, HASHIMOTO, TANAKA, and Captains
 12 CHO and TANAKA.^c According to TANAKA, Ryukichi, CHO
 13 told him that one purpose of the organization was to
 14 settle the Manchurian problem;^d and according to
 15 the Home Ministry report, by 1930 this group had come
 16 to the conclusion that in order to settle the Manchurian
 17 and Mongolian problems positively, the Japanese nation
 18 would first have to be reconstructed.^e

19 D-20. On July 1, 1931 the War Ministry dis-
 20 cussed Manchurian-Mongolian problems with officials
 21 of the South Manchuria Railway. At the meeting which
 22 was attended by the accused MINAMI and KOISO and by
 23 other high ranking generals including TATEKAWA, MINAMI,
 24

25 (D-19. a. T. 1,961-2; Ex. 183, T. 2,189.
 b. Ex. 183, T. 2,189.
 c. Ex. 183, T. 2,190
 d. T. 1,963.
 e. Ex. 183, T. 2,191.)

1 then War Minister, stated that the army had long recog-
2 nized the need for increasing its divisions in Korea and
3 he hoped the day would come when more divisions would
4 be sent.^{a.} In view of the character of his audience
5 and the nature of the problem under discussion, the
6 statement is subject to only one inference or inter-
7 pretation: that MINAMI and the War Ministry favored
8 military action in Manchuria. On August 4, 1931,
9 MINAMI made a speech to the division commanders in
10 which he stated that Manchuria and Mongolia were close-
11 ly related to Japan's national defense as well as to
12 her politics and economics, and that it was to be re-
13 gretted that the situation in China was following a
14 trend unfavorable to Japan. He then stated he hoped
15 that in view of this the commanders would carry out
16 their duty of educating and training troops so that
17 they could serve His Majesty's cause to perfection.^{b.}
18 The meaning of MINAMI's statement was clear and was
19 readily understood. On August 6, 1931, OZAKI, Yu'io,
20 and six other members of the Citizens' Disarmament
21 League, wrote to MINAMI of the danger of spreading
22 this propaganda and stated that it seemed to be MINAMI's
23 intention to pit the divisional commanders against the
24

25 (D-20. a. Ex. 2202-A, T. 15,752-3.
b. Ex. 186, part 1, T. 2,209-10.)

c.
politicians in a political dispute.

1 D-21. In the Kwantung Army a similar pheno-
2 menon was taking place. MORISHIMA, Consul at Mukden,
3 testified that from the fall of the TANAKA Cabinet
4 until the late summer of 1931 the influence of the
5 group desiring to take over Manchuria increased. ITA-
6 GAKI, ISHIHARA and HANAYA, all staff officers of the
7 Kwantung Army, became definitely identified with the
8 leadership of this group. They felt that the use of
9 armed force was necessary to preserve Japan's inter-
10 ests and they wanted to occupy Manchuria and establish
11 a government separate from China.^{a.} The witness had
12 personally heard ITAGAKI state that a very positive
13 policy must be taken.^{b.} This determination to use
14 force became progressively stronger throughout the sum-
15 mer of 1931, and it was evident by the end of the sum-
16 mer that it was only a matter of days until the army
17 would move in Manchuria.^{c.}
18

19 D-22. While the army was busily preparing
20 for its move into Manchuria, Dr. OKAWA, Shumei, who
21 had previously written two books in which he had
22 preached the doctrine that it was unavoidable to have
23

24 (D-20. c. Ex. 184, T. 2,192-4.)

(D-21. a. Ex. 245, T. 3,016-7.

b. T. 3,027.

c. Ex. 245, T. 3,017.)

1 a "deathly" fight between the powers of the East and of
 2 the West, and that Providence was trying to elect Japan
 3 as the champion of Asia,^{a.} was plotting and carrying on
 4 propaganda for purposes of realizing the object of the
 5 conspiracy. In his testimony before the Tokyo Court
 6 of Appeals, OKAWA stated that, as an employee of the
 7 East Asia Research Institute of the South Manchurian
 8 Railway, he had concluded that for Japan to be inde-
 9 pendent she would need both Korea and Manchuria to be
 10 self-sufficient in territory. While thus engaged, he
 11 became intimately acquainted with KOISO, ITAGAKI, DOHI-
 12 HARA, TADA and others who were subsequently involved
 13 in the events being considered.^{b.} In 1929 he started
 14 a people's movement because he felt that the Manchurian
 15 and Mongolian problems could not be left in the hands
 16 of the capitalists and politicians. From April or
 17 May 1929 until the Manchurian Incident he gave a series
 18 of lectures in every prefecture in Japan advocating that
 19 Japan must attempt economic developments in Manchuria
 20 and that Japan must build her life on an economic sys-
 21 tem uniting Japan and Manchuria.^{c.} In a subsequent
 22 statement to the Tokyo Court of Appeals, OKAWA admitted
 23 that he gathered the authorities versed on the situation
 24 (D-22. a. Ex. 2179-A, T. 15,605-9; Ex. 2180-A, T. 15,610-
 25 15,611.

b. Ex. 2177-A, T. 15,565-6

c. Ex. 2177-A, T. 15,573.)

1 in Manchuria, Mongolia and China and sent them out as
 2 propagandists for the purpose of leading the armed
 3 forces, the local leading class, and the general popu-
 4 lace on the situation in Manchuria. ^{d.} By August of
 5 1931 these propagandists had made the round of the
 6 whole land. ^{e.} Their propaganda stressed Japan's par-
 7 ticular position in Manchuria. ^{f.} OKAWA admitted that
 8 through cooperation with the Kwantung Army he had done
 9 his best to further background operations, going so
 10 far as to risk the lives of his followers, and on
 11 occasion going himself into the actual field to plan
 12 matters. ^{g.} This cooperation between OKAWA and the Jap-
 13 anese Army shows clearly that their aim was not limited
 14 to obtaining Manchuria. As early as 1924 OKAWA had
 15 openly espoused the ideas of SATO, Shinen, who had
 16 advocated that Japan should first absorb China, then
 17 obtain the whole South Seas area so as to prepare for
 18 the northward advance of England, and then obtain con-
 19 trol of India and the Indian Ocean. ^{h.}

20 D-23. This continual plotting, planning,
 21 agitation and propaganda had a most serious influence
 22 throughout Japan. Baron OKADA, who was a member of the

23 (D-22. d. Ex. 2178-B, T. 15,595-6.
 24 e. Ex. 2178-B, T. 15,596.
 25 f. Ex. 2178-B, T. 15,598.
 g. Ex. 2178-B, T. 15,598-9.
 h. Ex. 2183-A, T. 15,632-3.)

1 Supreme War Council during the entire two year period,
2 testified that in his discussions with Cabinet Members
3 and other statesmen much concern was expressed over
4 the Army philosophy, which held that the Manchurian
5 problem could not be solved short of using force to
6 establish a puppet government, and that it was felt
7 that it was only a question of time until the army would
8 undertake the occupation of Manchuria.^{a.}

9 D-24. Internally, there was still one ser-
10 ious obstacle to the easy accomplishment of the con-
11 spiracy -- the duly established government of Japan.
12 The HAMAGUCHI Cabinet was in power, and even more im-
13 portant, due to the attempted assassination of the
14 Premier, Foreign Minister SHIDEHARA, the hated exponent
15 of the "Friendship Policy," was acting Premier.^{a.} If
16 the conspirators could also take over the government,
17 they would be free to move without any restraint. Ac-
18 cordingly, the conspirators conceived of and proceeded
19 to execute a plan for seizing the government. This
20 effort became known as the March Incident. In his tes-
21 timony before the Tokyo Court of Appeals, OKAWA testi-
22 fied that, having learned from KOISO that UGAKI was to
23 become president of the Seiyukai, upon the request of
24 (D-23. a. Ex. 175, T. 1,820-1.)
25 (D-24. a. Ex. 156, T. 1,323.)

1 Colonel SHIGETO and the accused HASHIMOTO, he held an
2 interview with UGAKI to learn his views and discovered
3 that UGAKI felt that Japan could never develop her
4 fate and overseas development with her present Diet
5 and parties. OKAWA's report of the conference was
6 reported in turn by HASHIMOTO and SHIGETO to Deputy
7 Chief of Staff NINOMIYA and TATEKAWA. All these par-
8 ties and others, including KOISO, held discussions
9 and it was planned to have a mass demonstration on
10 March 20, to be followed by the imposition of martial
11 law. This had appeared to be UGAKI's intention. How-
12 ever, UGAKI felt that this should not be done; and KOISO
13 told OKAWA that there was danger of discovery as too
14 many persons were involved, and that they should there-
15 fore pretend on the surface to have suspended the plot.^{b.}
16 SHIMIZU, a henchman of OKAWA, testified that he was
17 present at the meeting between OKAWA and KOISO and
18 heard the latter say it was the direct order of the
19 army to abandon the plot.^{c.} UGAKI testified that when
20 he was informed by KOISO and SUGIYAMA that there was a
21 plot to seize the government and put him at the head of
22 it, and that OKAWA was involved and wanted army aid, he
23 immediately ordered both of them to stop all plans
24

25 (D-24. b. Ex. 2177-A, T. 15,580-83.
c. Ex. 157, T. 1,404.)

39,093

1 for carrying out the revolutionary coup by use of
2 the army and to so advise the conspirators. d.

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22 (D-24. d. Ex. 163, T. 1,608.)
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HASIMOTO in his testimony named himself,
1 TATEKAWA, KOISO, NINOMIYA, SUGIYAMA and OKAWA as
2 conspirators.^{e.} HASHIMOTO, in his interrogation, also
3 named as conspirators NAGATA, IKEDA, SHIGETO and CHO.^{f.}
4 This incident went further than the mere plotting stage
5 and active preparations were made to carry it out.
6 The witness SHIMIZU was to throw some bombs outside
7 the Diet during a demonstration of OKAWA's followers,
8 and OKAWA was to lead the mob into the Diet and take
9 over the government. Some 300 bombs which HASHIMOTO
10 obtained from the army were delivered to SHIMIZU.^{g.}
11 Much has been made of the fact that SHIMIZU testified
12 that he was told that the bombs were not real but were
13 mock bombs or firecrackers.^{h.} Whether true or not, this
14 fact is totally unimportant. The purpose of the bombs
15 was to start a mass demonstration which would lead to
16 martial law, and for that purpose mock bombs could be
17 just as efficacious as the real thing. Moreover, the
18 validity of the story told to SHIMIZU was belied by
19 TOKUGAWA's testimony of the strenuous efforts of
20 KOISO, who had procured the bombs, to have them returned
21 because he was in a bad situation at the general staff.^{i.}
22 At KOISO's instance, TOKUGAWA persuaded SHIMIZU to
23

24 (D-24. e. T. 28820. h. T. 1418
25 f. Ex. 2188, T. 15677. i. Ex. 158, T. 1442.)
g. Ex. 157, T. 1402-3.

return them^{j.} and SHIMIZU finally returned them to
Colonel NEMOTO.^{k.} The plot, though abortive, did not
remain a secret. Both the fact that there had been a
plot and that it had been led by KOISO, TATEKAWA and
NINOMIYA with HASHIMOTO, SHIGEFUJI and OKAWA as col-
laborators was well known to KIDO and the court circle.^{l.}

D-25. In his testimony in the Tokyo Court,
OKA A stated that the Manchurian Incident was the motive
for the March Incident.^{a.} This statement needs no fur-
ther corroboration than the fact that among the leaders
and participants in the March Incident were some who
from 1929 to 1931 were openly and boldly demanding
drastic action in Manchuria and were to play leading
roles in the incident itself.

D-26. Following the debacle of the plot to
take over the government, the movement to take over
Manchuria continued with increasing vigor. On June 23,
1931, the accused KIDO admittedly already had infor-
mation of a plot on the part of the military officers
in Manchuria,^{a.} and thereafter reported to the Lord
Keeper information about a conspiracy in China contrived
by the military in conjunction with some adventurers.^{b.}

In the summer of 1931, there occurred an incident which

(D-24. j. Ex. 158, T. 1442. (D-25. a. Ex. 2177A, T. 15578
k. Ex. 157, T. 1404. (D-26. a. Ex. 3340, T. 30728
l. Ex. 179F, T. 1927-8; b. Ex. 3340; T. 30728-9
Ex. 179G, T. 1931.)

increased the tension between Japan and China and which
1 clearly indicated the extent of the planning. Captain
2 NAKAMURA was killed by Chinese soldiers in Manchuria
3 and the Japanese regarded this as the culminating in-
4 cident in a series of events which they claimed showed
5 disregard of Japanese rights by Chinese. The Lytton
6 Commission found that NAKAMURA admittedly was an army
7 officer on active duty on a mission for the army and had
8 represented himself as an agricultural expert. He had
9 been warned that the area was bandit-ridden. He was
10 armed and carried medicines which, according to the
11 Chinese, included narcotics. ^{c.} MORISHIMA, the assistant
12 consul at Mukden, who devoted much of his time in August
13 and September 1931 to the handling of this affair, tes-
14 tified that NAKAMURA was on an investigation tour of
15 Inner Mongolia for the Kwantung Army and had obtained
16 a passport from the Chinese under false representation. ^{d.}
17 In view of the nature of his mission and the covert and
18 illegal manner in which it was being carried out, it is
19 difficult to understand the tremendous outcry made by
20 the Japanese unless their purpose in so doing was further
21 agitation to build up the situation for the Mukden
22 Incident. This is further borne out by the fact that,
23 although the NAKAMURA incident took place in June, its
24 (D-26. c. Ex. 57, T. 1781-2.
25 d. Ex. 245, T. 3017-8.)

announcement was delayed until August.

1 D-27. Shortly prior to the outbreak of the
2 Mukden Incident, the tension increased and there were
3 reports of imminent action in Manchuria. SHIDEHARA
4 testified that he had received confidential reports
5 that the Kwantung Army had been massing troops and
6 bringing up ammunition and material for military purposes,
7 and concluded that some action of some kind was contem-
8 plated by the military clique.^{a.} He spoke to MINAMI,
9 the War Minister, about them.^{b.} MINAMI himself con-
10 firmed that SHIDEHARA had kept him informed and stated
11 that shortly before September 18, SHIDEHARA reported
12 that something seemed to be going on.^{c.} As TATEKAWA
13 was being sent by the General Staff to Manchuria,
14 MINAMI talked the matter over with him.^{d.} On September
15 15 or 16, 1931, SHIDEHARA received a cable reporting
16 that the commander of a patrol unit had stated that
17 within a week a big incident would break out and
18 SHIDEHARA protested to MINAMI. MINAMI, in turn, im-
19 mediately sent TATEKAWA as a special emissary to Mukden
20 to stop the action at all costs.^{e.} The sending of the
21 consular report was confirmed by defense witness
22 KATAKURA.^{f.}

24 (D-26. e. T. 18886.)
25 (D-27. a. Ex. 156, T. 1324.
b. T. 1334.
c. T. 19821.

(D-27. d. T. 19821.
e. T. 2006.
f. T. 19106-7.)

2. THE MUKDEN INCIDENT - September 18, 1931.

1 D-28. As a climax to the mounting tension,
2 there occurred about 10 p.m. on September 18, 1931,
3 an alleged light explosion on the South Manchurian
4 Railroad, as a result of which the Kwantung Army went
5 into immediate action and did not stop until it was
6 completely in control of all Manchuria. According to
7 the Lytton Commission, the Japanese version of the
8 incident was that a patrol, on hearing of the explosion,
9 discovered that a portion of one rail was blown up leav-
10 ing a gap. When they arrived, they were fired on from
11 the east side of the railroad line, but when fire was
12 returned, the other side stopped and retreated. The
13 Japanese pursued and were attacked by 300 to 400 men,
14 and reinforcements were then sent from Captain YAWASHIMA
15 and Colonel SHIMAMOTO. In the meantime, the southbound
16 train from Changchun passed over the damaged spot with-
17 out stopping and arrived at its destination on time.
18 SHIMAMOTO ordered an attack on the Chinese barracks,
19 which the Chinese contested, but the barracks were
20 captured. In the meantime, Colonel HIRATA decided to
21 attack the walled city and by 6 a.m. the eastern wall
22 was occupied, and by 7:30 a.m. the arsenal and airdrome
23 were captured.^{a.} This same version has been repeated
24 (D-28. a. Ex. 57, T. 1787-92.)
25

before this Tribunal by defense witnesses HIRATA,
and SHIMAMOTO, Masaichi,^{c.} together with the additional
fact that ITAGAKI approved their plans.^{d.} The Chinese
version, as reported by the Commission, was that the
attack on the barracks was unprovoked and a surprise.
All soldiers were in the barracks, and since on
September 6 orders had been received to take special care
to avoid any clash with the Japanese, the sentries had
only dummy rifles. The Japanese had been carrying on
maneuvers around the barracks since the 14th, and on
the 18th they were maneuvering at a village where a train
with three or four coaches had stopped at 9 p.m. At
10 p.m., a light explosion and rifle fire were heard.
The Japanese began to attack the barracks, and there-
after started to attack with artillery. There was no
resistance except for one regiment which was cut off and
had to fight its way through.^{e.} The Commission after
hearing both sides concluded that the Japanese had a
carefully prepared plan to meet the possibility of
hostilities and the plan was put into operation with
swiftness and precision. The Chinese had no plan to
attack the Japanese, made no concerted or authorized
attack on them, and were surprised by the Japanese
attack. There was an explosion but the damage was

(D-28. b. Ex.2404,T.19284-95. d. T. 19307-13;T.30265.
c. Ex.2410,T.19479-85. e. Ex.57,T.1792-6.)

1 insufficient in itself to justify military action. The
2 Japanese military operations could not be regarded as
3 measures of self-defense, although the Commission did
4 not exclude the hypothesis that the officers might have
5 thought they were so acting.
6 f.

7 D-29. This Tribunal has had presented to it
8 testimony in addition to what the Lytton Commission
9 heard, and there is sufficient evidence to exclude any
10 hypothesis of self-defense, and to find that the inci-
11 dent, including the explosion of the railroad tracks,
12 was planned and put into effect by the conspirators.

13 John R. Powell examined the scene four or five days
14 later and found no visible damage to the roadbed.
15 a.

16 He also testified that the Japanese went to unusual
17 trouble to attempt to build up evidence that the Chinese
18 were to blame, and that the purpose of the exhibit and
19 the placing of dead Chinese soldiers with no blood
20 stains under them in the vicinity of the explosion was
21 so obvious that it aroused the suspicion of neutral
22 observers. b.

23 Defense witness OYAMA, who made an in-
24 vestigation but did not concern himself with attempt-
25 ing to ascertain the responsible party, testified
that the dead Chinese were on the east side of the
railroad line, a fact wholly inconsistent with the

(D-28, f. Ex. 57, T. 1797-8.) (D-29. a. T. 3213-4.
b. T. 3212-6.)

1 Japanese contention.^{c.} These suspicions were not con-
2 fined to neutral observers since the accused KIDO him-
3 self was suspicious when on September 23 the Head of
4 the Maintenance Bureau of the War Department could not
5 yet explain the cause of the explosion,^{d.} and even
6 a year later the Emperor was still suspicious.^{e.} As
7 early as September 19, Consul General HAYASHI reported
8 that the Kwantung Army would not permit the railway
9 authorities to approach the spot to repair the road,
10 and concluded that the incident was wholly an action
11 planned by the army.^{f.}

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23 (D-29. c. T. 19624-5.
24 d. Ex. 179J, T. 1939.
e. T. 19029.
25 f. Ex. 181, T. 2178-9.)

1 D-30. Moreover, a week before the incident
2 one of the cogs in the conspiracy, in an outburst of
3 zeal, disclosed that something was scheduled to happen
4 on the 18th of September. According to defense witness
5 KATAKURA, Lt. KAWAKAMI at Fushun had assembled offi-
6 cials of the railway and stated that some acute situa-
7 tion might arise after the 17th and that arrangements
8 ought to be made about trains at Fushun.^{a.} According
9 to defense witness ISHIHARA, KAWAKAMI, after receiving
10 HONJO's new orders as to the work of his command,
11 became worried about the defense of Fushun, since under
12 the orders he had to leave the area, and had posited a
13 hypothesis to those who would defend Fushun as to what
14 they would do if on September 18 an event would occur
15 in Mukden requiring KAWAKAMI to leave; and that after
16 the meeting he had notified all concerned that it was
17 only a hypothesis.^{b.} The care taken to let the listeners
18 know that the problem was only a hypothesis is clear
19 evidence in light of all the circumstances that the
20 incident was planned. The contention that the date of
21 the 18th was named purely as a coincidence is utterly
22 unworthy of belief. To show that it was only a coinci-
23 dence, ISHIHARA pointed out that on the 18th KAWAKAMI

24 (D-30. a. T. 18933.
25 b. T. 22141.)

c.
forgot to perform his task. It is not at all unusual
1 in any conspiracy that one of the conspirators should
2 get excited and lose his head at a decisive moment.

3 D-31. Moreover, if the Chinese had blown up
4 the railroad, which was Japanese owned, operated and
5 controlled, common sense would indicate that they would
6 have done the job in a way so as to cause considerable
7 damage and not to leave it easily repairable for use
8 by the enemy. Furthermore, the Chinese were totally
9 unprepared. Defense witness SHIMAMOTO testified that
10 the Chinese foolishly fought with electric lights on
11 in the barracks, while the Japanese approached from
12 the dark and shelled;^{a.} and the Japanese version of
13 events before the Lytton Commission showed that 320
14 Chinese were killed in the barracks at the cost of only
15 two Japanese lives.^{b.}
16

17 D-32. Even if there were no evidence at
18 all to show that the Japanese had planned the whole
19 incident, there is ample evidence before this Tribunal
20 to sustain the finding of the Lytton Commission that
21 the Japanese had a carefully-prepared plan in the event
22 of hostilities which was carried out swiftly and
23 precisely on an occasion which did not justify military
24

25 (D-30. c. T. 22142.

D-31. a. Ex. 2410, T. 19485.

b. Ex. 57, T. 1791.)

1 action -- a finding which in itself is evidence of
2 the highest order.

3 D-33. OKADA testified that when he joined
4 the SAITO Cabinet in 1932 he learned from reports that
5 the occurrence of September 18, 1931, was plotted and
6 arranged by the clique in the Kwantung Army.^{a.} TANAKA,
7 Ryukichi, a former army officer familiar with the Man-
8 churian problem, testified fully from his own knowledge
9 and from statements made to him by certain of the lead-
10 ing conspirators about the events connected with the
11 Manchurian aggression. He named as the leading persons
12 involved TATEKAWA, the accused HASHIMOTO, CHO, the
13 accused ITAGAKI, ISHIHARA and OKAWA.^{b.} In the fall of
14 1934, HASHIMOTO told him that the Manchurian Incident
15 had been planned by the Kwantung Army and that he, in
16 accordance with the plan, had assisted it. HASHIMOTO
17 told him that it was the plan of the Kwantung Army to
18 exploit Manchuria while under army occupation. HASHIMOTO
19 named himself and the other five named by TANAKA as the
20 conspirators and defined the purpose as being to occupy
21 Manchuria, to destroy the influence of the war lords,
22 and to bring about economic development and army
23 occupation.^{c.} Captain CHO, another of the conspirators,

24 (D-33. a. Ex. 175, T. 1822.
25 b. T. 1966.
c. T. 1968-78.)

1 told TANAKA that the Manchurian Incident had been planned
2 in advance by the Kwantung Army, and that through the
3 Sakurakai he had exerted efforts to have the army and
4 the people understand the need of definitely settling
5 the Manchurian issue. He named as conspirators the
6 same persons named by HASHIMOTO excepting TATEKAWA.^{d.}
7 CHO further admitted that to obtain Central Army support
8 for the Kwantung Army, he let loose rumors that the
9 Kwantung Army intended to carry out a separationist
10 movement and declare itself independent of Japan, and
11 he thus obtained a change in favor of the Kwantung
12 Army.^{e.} In 1934, OKAWA told TANAKA that the Manchurian
13 Incident was the result of planning. He named the
14 same conspirators and stated that the events of September
15 18 were the result of OKAWA's plan. He had been
16 working on such a plan and was extremely gratified
17 that a similar plan was being prepared and carried out
18 by the Kwantung Army, in which ITAGAKI was the leader.^{f.}
19 In 1935, ITAGAKI, under whom TANAKA was then serving,
20 told TANAKA about the secret installation of two heavy
21 guns sent to Manchuria for Mukden.^{g.} According to the
22 witness, these guns were of sufficient range to reach
23 the spot where the alleged explosion took place.^{h.}
24

25 (D-33, d. T. 2014-6. g. T. 1988-90.
e. T. 2017. h. T. 1991.)
f. T. 1980-4.

1 In 1934, TATEKAWA told TANAKA that prior to September 18,
 2 1931, he had expected an outbreak in Manchuria and
 3 that he had been sent as a special emissary, with
 4 specific instructions to stop the incident at all costs
 5 but that he had not desired to stop it. The Kwantung
 6 Army officers, knowing he had come to stop it, took
 7 him to a restaurant to isolate him, and he went willingly
 8 because he neither intended nor wanted to see other
 9 people in Mukden.^{1.}

10 D-34. Other witnesses have also testified
 11 to contemporaneous statements made by some of the
 12 conspirators. In August 1931, OKAWA told SHIMIZU
 13 that Colonels KOMOTO and ITAGAKI would bring about an
 14 incident some time later on.^{a.} In August 1931, both
 15 SHIGETO and HASHIMOTO told the witness FUJITA that
 16 positive action should be taken in Manchuria.^{b.} On
 17 September 19, when FUJITA, after reading about the
 18 Manchurian Incident, confronted SHIGETO with the state-
 19 ment that they had accomplished what they were con-
 20 templating in Manchuria, SHIGETO answered affirmatively.^{c.}
 21 When he asked on the same day a similar question of
 22 HASHIMOTO, the latter replied that things had come to
 23 pass as they should.^{d.}

25 (D-33. 1. T. 2003-7.

D-34. a. Ex. 157, T.1404, 1410-11. D-34. c. Ex. 160, T.1465.
 b. Ex. 160, T. 1464. d. Ex. 160, T.1466.)

1 D-35. The testimony of TANAKA and others
2 about the statements made by the conspirators in the
3 course of the conspiracy with respect to their rela-
4 tions to the plan and its execution is corroborative
5 of and is corroborated by other vital evidence which
6 fully reveals that the incident was no minor, unex-
7 pected clash, but a bold overt move to seize Manchuria.
8 Even if there had been no statement made by TATEKAWA
9 to TANAKA, TATEKAWA's conduct during his mission dis-
10 closed that he had no desire or intent to stop the
11 incident from taking place and his conduct leaves room
12 for no inference other than TATEKAWA was acting as a
13 conspirator in furtherance of the scheme, and that the
14 Kwantung Army assisted him wholeheartedly to fail in
15 his mission. Admittedly, TATEKAWA was sent to Mukden
16 as a result of SHIDEHARA's communications to MINAMI.^{a.}
17 MINAMI denied, however, that he had instructed TATEKAWA
18 to stop the incident at all costs,^{b.} and maintained that
19 he was merely sent to investigate the Manchurian
20 situation in light of the cabinet discussion with
21 SHIDEHARA;^{c.} but at the same time, MINAMI also stated
22 that when TATEKAWA returned to Tokyo, MINAMI received
23 a report that TATEKAWA had been unable to communicate
24 the order,^{d.} thus establishing the very order he denied.
25

(D-35. a. T. 19822-3.

b. T. 19825.

c. T. 19823.

d. T. 19822.)

From the testimony of defense witnesses KATAKURA,
 1 ISHIIHARA,^{f.} and the accused ITAGAKI,^{g.} it was revealed
 2 that the coming of TATEKAWA was known in advance.
 3 General MIYAKE, Chief of Staff of the Kwantung Army,
 4 had notified Commander HONJO who was on an inspection
 5 tour, and had requested the return of either ISHIIHARA
 6 or the accused ITAGAKI to Mukden to meet TATEKAWA.
 7 ITAGAKI had been sent. It was shown through MORISHIMA
 8 that both in traveling^{h.} and while in Mukden,^{i.} TATEKAWA
 9 was dressed in civilian clothes for this mission to
 10 an army in the field, which was so unusual under the
 11 circumstances as to alarm MORISHIMA.^{j.} ITAGAKI himself
 12 testified that toward evening he met and dined with
 13 TATEKAWA, and in the course of the conversation,
 14 TATEKAWA said nothing except that he was tired from
 15 his trip. When TATEKAWA finally mentioned that the
 16 superiors were worried about the unscrupulous conduct
 17 of the young officers, ITAGAKI cut the conversation
 18 short by telling him there was no need to worry and
 19 that he would hear him at leisure the next day.^{k.} In
 20 selecting ITAGAKI as the person to meet TATEKAWA, it
 21 is clear that the Kwantung Army was taking every action

(D-35. e. T. 18901.

f. T. 22117-8.

g. Ex. 3316, T. 30260-1.

h. Ex. 245, T. 3019.

i. Ex. 245, T. 3023.

D-35. j. Ex. 245, T. 3019.

k. Ex. 3316, T. 30261.

1 to stop anything from preventing their plan from going
2 through. The only inference that can be drawn from
3 MIYAKE's sending for either ISHIHARA or ITAGAKI, the
4 known leaders in the Kwantung Army of the policy to
5 use force in Manchuria, and the sending of ITAGAKI,
6 is that the Kwantung Army had decided to move and to
7 allow nothing to interfere. The pleasant chat between
8 ITAGAKI and TATEKAWA with ITAGAKI skillfully prevent-
9 ing the discussion of any item touching on the subject
10 was a mutual conspiracy to keep silent on the vital
11 matter, since both were aware that the breaking of the
12 silence might bring the entire project to a premature
13 end.

14 D-36. The actions of ITAGAKI and others
15 during the night of the 18th further revealed that the
16 conspirators were determined to carry through their
17 plan and would permit no interference from Tokyo or
18 elsewhere. At 10.45 p.m., Assistant Consul MORISHIMA,
19 in the absence of Consul-General HAYASHI, was summoned
20 to Army Headquarters where he met ITAGAKI, HANAYA and
21 others. When, after ITAGAKI had told him that they
22 must take appropriate measures through military force
23 and that orders had been issued, MORISHIMA advised
24 peaceful negotiations, which he believed would be
25 successful, ITAGAKI told him not to interfere with

the Supreme Command. When MORISHIMA tried to reason
 1 for an amicable negotiation, HANAYA drew his sword
 2 and threatened to kill him.^{a.} During the night Consul-
 3 General HAYASHI tried repeatedly to persuade ITAGAKI
 4 to cease fighting and to allow a peaceful settlement
 5 but was told to stop interfering with the Supreme
 6 Command and that the army would proceed as planned.
 7 Without avail he notified the army of the fact that
 8 the Chinese were proceeding on a policy of non-
 9 resistance.^{b.} On September 19 HAYASHI was compelled
 10 to report that the army was planning positive opera-
 11 tions at various places along the railway zone and to
 12 ask the government to take immediate steps to stop
 13 them.^{c.}

15 D-37. The testimony introduced by the
 16 defense shows equally clearly how far the matter was
 17 planned. ISHIHARA testified that the Kwantung Army
 18 had set up an operational plan to settle whatever
 19 incident might happen in the shortest possible time
 20 and had finished all its preparations. Two heavy guns
 21 were set up, armored cars were attached to the infantry,
 22 and explosives and other materials were prepared.^{a.}

23 (D-36. a. Ex. 245, T. 3020-22.
 24 b. Ex. 245, T. 3022; Ex. 181, T. 2179-80;
 Ex. 2193, T. 15735-6.
 25 c. Ex. 181, pt. 2, T. 2183.
 D-37. a. Ex. 2584, T. 22113.)

1 The witness HIRATA testified that HONJO had issued
2 instructions that in case of necessity they should
3 take positive action and try not to impair the prestige
4 of the army. Accordingly, the witness issued ball
5 cartridges to his men and put them on battle footing.
6 He carried out more and more intense drills and
7 frequent night maneuvers, and held emergency drills
8 so that day and night maneuvers for defense of the
9 railway zone were carried out.
b.

10 Judge Kwei will continue the reading.

11 THE PRESIDENT: Judge Kwei.

12 JUDGE KWEI: (Continuing)

13 3. The Military Developments after
14 September 18, 1931.

15 D-38. As soon as the outbreak of the hos-
16 tilities was reported in Tokyo, an extraordinary cabinet
17 meeting was held on September 19, 1931, at which it
18 was decided that the policy would be one of non-expansion
19 and that the affair would be terminated at once.
a.

20 Baron WAKATSUKI, the Premier at the time, testified about
21 this meeting and the next one when MINAMI reported
22 that for strategic and tactical reasons it had been
23 necessary to pursue the Chinese into Chinese territory,
24

25 (D-37. b. Ex. 2404, T. 19283-4.
D-38. a. Ex. 162, T. 1554-5.)

a protective measure which would not be extended. ^{b.}

1 WAKATSUKI also testified that, despite the unanimous
2 opinion of the cabinet that the operations must cease
3 immediately, the expansion continued, and in his daily
4 conferences with MINAMI he was shown by MINAMI on maps
5 the boundary which the army would not go beyond, but
6 almost daily the boundary was ignored and further
7 expansion reported with the assurance that it was the
8 final move. "Typical of the army maneuvers to evade
9 the established government policy of non-enlargement
10 was the movement of Korean Army troops across the Yalu
11 River. On September 19, according to defense witness
12 KAWABE, Commander HAYASHI of the Korean Army wired to
13 the Chief of Staff in Tokyo that steps had been taken
14 to send to Manchuria a unit to relieve the Kwantung
15 Army near Mukden. It was decided by the Chief of
16 Staff to order the action stopped. An order was im-
17 mediately sent to HAYASHI and also directly to the unit
18 at Hsinichow that the Korean Army should not attempt
19 to cross the Yalu. ^{d.} On the afternoon or evening of
20 the 21st HAYASHI reported to the general staff that
21 he knew that the forces near Mukden had been diminished
22 by the sending of forces to Kirin, and judging that

25 (D-38. b. Ex. 162, T. 1555.
c. Ex. 162, T. 1556.
d. Ex. 2408, T. 19412-3.)

he should help the Kwantung Army, on his own discretion
 1 he had ordered Korean Army troops to be transported to
 2 Mukden.^{e.} Here, there was an outright and flagrant
 3 violation of the established policy of the government.
 4 Yet, nothing was done to disavow the action, to restore
 5 the status quo or to remove the commander. On the
 6 cont. the action was condoned and accepted. According
 7 to MINAMI's own testimony, he reported to WAKATSUKI
 8 that HAYASHI had moved the troops at his own discretion,^{f.}
 9 but according to WAKATSUKI, MINAMI also reported that
 10 HAYASHI had received an urgent request from the
 11 Kwantung Army for aid.^{g.} This latter statement was
 12 made undoubtedly to impress the Premier with the fact
 13 that this was an emergency measure to meet an emergency
 14 which MINAMI and the army knew did not exist. At the
 15 cabinet meeting on September 22, it was decided to
 16 defray the expenses incurred by the Korean Army in
 17 making the move.^{h.} WAKATSUKI reported the cabinet
 18 decision to pay the expenses to the Emperor,^{i.} and
 19 KANAYA obtained the Imperial sanction approving retro-
 20 actively the movement of the troops.^{j.} MINAMI admitted
 21 that they could always control the Supreme Command by
 22 refusing to authorize expenditures, but the idea of

(D-38. e. Ex. 2408, T. 19414. h. T. 1563-4; T. 19783.
 25 f. Ex. 2435, T. 19782. i. T. 1564; T. 19783.
 g. Ex. 162, T. 1555-6. j. T. 1565-6; T. 19783.)

1 withholding funds never entered his mind and was not
2 suggested by anyone else.^{k.} The conclusion is clear
3 that no one wanted to or dared to stop the Supreme
4 Command or the Kwantung Army. MINAMI further stated
5 that HAYASHI had received punishment from the Emperor,
6 but was not recalled or replaced.^{l.} The actual punish-
7 ment received was only a reprimand. A reprimand could
8 hardly be called adequate punishment for the delib-
9 erate flouting of a fixed government policy and for
10 disobedience of a Supreme Command order. It could
11 hardly be called a deterrent against similar moves
12 in the evolution of the conspiracy.

13 (D-38. k. T. 19852-56.
14 l. T. 19857.)
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1 D-39. As a matter of fact, the army, repre-
2 sented by the Supreme Command, never wanted the policy
3 of nonenlargement of the incident and never intended
4 to carry it out. General MINAMI himself testified
5 that the Supreme Command, represented by KANAYA and
6 MINOMIYA, strongly favored sending reinforcements
7 for operational reasons at the time of the outbreak
8 of the incident and that it took some time before the
9 nonexpansion policy could be decided.^{a.} On September 19,
10 the day the Cabinet made its decision, the accused
11 KIDO reported that WAKATSUKI was worried that the
12 army was not driving home the policies decided by
13 the Cabinet.^{b.} On September 22, 1931, KIDO reported
14 that the army was so strongly determined in its
15 policy toward Manchuria that orders given by the
16 central authorities might not be thoroughly understood,
17 and that the army was indignant because the Emperor had
18 approved the governmental policy under influence of
19 his personal attendants.^{c.} On the 29th KIDO reported
20 to the Lord Keeper his conversation with Baron HARADA,
21 Prince SAIONJI's secretary, to the effect that the
22 Army Chief of Staff had told WAKATSUKI that the Army
23 might be compelled to send troops to the Yangtse River,

25 D-39. a. Ex. 2435, T. 19781.

b. Ex. 179-H, T. 1936.

c. Ex. 179-I, T. 1938.

and that if this happened, he did not want the
 1 government to interfere with the prerogative of the
 2 Supreme Command of the Army. ^{d.} On October 15 HAYASHI
 3 of the War Office told KIDO and SHIRATORI that it would
 4 be unwise to take time to solve the Manchurian ques-
 5 tion since it needed a prompt solution from the point
 6 of view of army discipline. He stated it was neces-
 7 sary to create a new regime in Manchuria and that the
 8 authorities should give tacit approval and facilitate
 9 the problem. The militarists still planned to es-
 10 tablish a new regime and their attitude had stiffened. ^{e.}

12 D-40. On October 1, KIDO noted that he,
 13 HARADA, KONOYE and SHIRATORI discussed the mili-
 14 tarists' secret plot and plan for a coup d'etat to
 15 set up a dictatorship, and that it would be necessary
 16 to guide the military so they do not cause serious
 17 damage. ^{a.} On October 7 he noted that efforts were
 18 being made to save the situation if something hap-
 19 pened as a rebellion among the young officers; ^{b.} and
 20 again on the 14th he learned that the plots of the
 21 army were progressing rapidly. ^{c.} This constant
 22 thread in the conversation of an expected move by

24 D-39. d. Ex. 179-K, T. 1939-40. D-39.e.Ex.179-Q.T.1942-3

25 D-40. a. Ex. 179-L, T. 1940.

b. Ex. 179-9, T. 1941.

c. Ex. 179-P, T. 1942.

1 the Army to seize control of the government was not
2 without a basis in fact. In October, the conspira-
3 tors, dissatisfied with the government's policy and
4 regarding it as the one obstacle to carrying out the
5 conspiracy, again planned to seize control of the
6 government. This move became known as the October
7 Incident. The accused HASHIMOTO admitted that he
8 thought up the plan in early October 1931 to bring
9 about a Cabinet headed by ARAKI; as a result of a
10 conversation with Captain C. O.^{c.} In his testimony in
11 the Tokyo Court of Appeals OKAWA testified that the
12 WAKATSUKI Cabinet was dilly-dallying, and the aim of
13 the incident was to crush the cabinet and set up a
14 new and powerful party capable of solving important
15 problems. He stated that he was the only civilian
16 involved in the plan drawn up by two army officers
17 and that he did not know all the details, that he
18 received his orders from HASHIMOTO and that among those
19 involved were SHIGETO, HASHIMOTO, ITAGAKI and DOHI-
20 HARA.^{c.} In his own testimony and through a witness,
21 HASHIMOTO tried to show that OKAWA was not involved
22 in the October Incident. However, in view of the
23 fact that OKAWA made his statement in a court
24

25 D-49. d. Ex. 3195, T. 28795.
e. Ex. 2177-A, T. 15585-7.

1 proceeding, and in view of the fact that in his
 2 interrogation by the prosecution HASHIMOTO admitted
 3 OKAWA's participation as well as that of NIMOMIYA
 4 and TATEKAWA,^{f.} and in view of the stories told by
 5 OKAWA, HASHIMOTO and CHO to TANAKA of OKAWA's partici-
 6 pation,^{g.} this evidence would seem to be a mere
 7 belated idea to take advantage of OKAWA's real or
 8 pseudo present mental condition. In 1932 Captain
 9 CHO told TANAKA that the purpose of the incident was
 10 to cleanse the ideological and political atmosphere,
 11 to renovate Japanese politics by assassinating the
 12 leaders, to set up a new government and then to
 13 obtain with the new unity, unanimous support for
 14 settlement of the Manchurian Incident.^{h.} TATEKAWA
 15 also told TANAKA that HASHIMOTO, CHO and OKAWA
 16 planned the October Incident to overthrow the govern-
 17 ment in power and to set up a new government which
 18 would support the Manchurian Incident.^{i.} The plot
 19 was discovered; HASHIMOTO and others were arrested.^{j.}

21 D-41. In the meantime, the military opera-
 22 tions in Manchuria continued to widen. On September
 23 21 the Japanese had reached Kirin.^{a.} In October, the

24 D-40. f. Ex. 2188, T. 15677.

g. T. 1966, 1973-81.

25 h. T. 1973; i. T. 2013; j. Ex. 3195, T. 28795.

D-41. a. Ex. 189, T. 2244.

1 Kwantung Army bombed Chinchow near the North China
 2 border, during which operation, according to a neutral
 3 witness, they bombed everything except the military
 4 objective. ^{b.} In November two riots were created in
 5 Tientsin to serve as a pretext for Japanese troops
 6 and a couple of airplanes to cross the Liao River,
 7 and immediately thereafter Chinchow was again bombed.
 8 It was finally occupied on January 3, 1932. ^{c.} From
 9 the middle of October until November 19, when the
 10 Japanese occupied Tsitsihar in Northern Manchuria,
 11 they carried out the Nonni Bridge operation. ^{d.}

12 D-42. On December 10, 1931, the WAKATSUKI
 13 Cabinet resigned. MINAMI in his testimony put the
 14 situation rather mildly when he stated that dissatis-
 15 faction had grown up in and out of Japan to the moder-
 16 ate policy of the WAKATSUKI Cabinet. ^{c.} WAKATSUKI
 17 himself testified that he exerted every effort to
 18 bring the Manchurian Incident under control, going to
 19 the extent of trying to form a coalition cabinet which
 20 would show, rightly or wrongly, that the people as a
 21 whole were opposed to the Manchurian Incident. For
 22 internal reasons this had to be given up. When ADACHI

24 D-41. b. Ex. 57, T. 2248.

c. Ex. 57, P. 66.

25 d. Ex. 57, T. 2249.

D-42. a. Ex. 2435, T. 19790.

1 refused to go along, the Cabinet resigned.^{b.} While
2 admitting that there were also other causes for the
3 resignation of this Cabinet --

4 THE PRESIDENT: This will do for this
5 afternoon. We will adjourn until half-past
6 nine tomorrow morning.

7 (Whereupon, at 1600, an adjourn-
8 ment was taken until Thursday, 12 February
9 1948, at 0930.)

10 - - - -